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Final Programmatic Environmental Assessment

For

Development of Temporary and Transient Emergency Housing for Disaster Victims in Southern West Virginia

Flash Flooding

FEMA - 1378 - DR - WV



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1.0 INTRODUCTION

1.1 Background

Due to damages resulting from flash flooding in 24 West Virginia Counties, the Federal Emergency Management Agency (FEMA) was authorized under a Presidential Major Disaster Declaration dated June 3, 2001 (FEMA-1378-DR-WV) (Appendix A) to provide Federal assistance to counties of West Virginia designated as major disaster areas (Figure 1). In accordance with 44 Code of Federal Regulations (CFR) Subpart B - Agency Implementing Procedures, Section 10.9 (Appendix B), this Programmatic Environmental Assessment (PEA) was prepared pursuant to Section 102 of the National Environmental Policy Act (NEPA) of 1969 (Appendix B), as implemented by regulations promulgated by the President's Council on Environmental Quality (40 CFR Parts 1500-1508) (Appendix B).

The purpose of this PEA is to analyze potential impacts of an expedited process for compliance with applicable State and Federal laws and regulations used during site selection and development to provide temporary and transient emergency housing for disaster victims in the Federally declared disaster area. The declared disaster area includes Boone, Cabell, Calhoun, Clay, Doddridge, Fayette, Greenbrier, Kanawha, Lincoln, Logan, Marion, Mason, McDowell, Mercer, Mingo, Nicholas, Preston, Putnam, Raleigh, Roane, Summers, Taylor, Wayne and Wyoming Counties in south west and north central West Virginia. The evaluation will determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI) (Appendix C). Through experience, FEMA has determined that the majority of recurring actions typically proposed for Federal funding, and for which an Environmental Assessment (EA) is required, can be grouped by type of action or location. Groups of actions can be evaluated in a PEA to comply with NEPA and NEPA's implementing regulations without the necessity of producing a time-consuming, stand-alone EA for every action (Appendix B).

1.2 FEMA Individual Assistance Program

FEMA proposes to administer Federal disaster assistance pursuant to The Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended (Act) (Appendix B). Through the Act, the Individual Assistance Program (Act Section 408) provides for disaster housing until alternative housing is available for disaster victims whose homes are uninhabitable. Assistance may be administered in several forms including temporary housing, home repair assistance, temporary rental assistance, mortgage, and rental assistance. Temporary housing may include purchase or lease of unoccupied habitable dwellings, suitable rental housing, mobile homes, travel trailers, or other readily fabricated dwellings for persons who require temporary housing due to a disaster event. The duration of Federal and operational assistance under this section of the Act is generally limited to 18 months but can be extended by FEMA.

1.3 Purpose and Scope of Document

This PEA discusses the potential environmental impacts from implementing various project alternatives for temporary emergency housing, fully or partially funded by FEMA, while administering flood disaster assistance in the State of West Virginia. This PEA also provides the public and FEMA decision-makers with the information required to understand and

evaluate potential environmental consequences. In addition to meeting these goals of impact identification and disclosure, this PEA addresses the need to streamline the NEPA review process in the interest of FEMA's primary mission of disaster response. This PEA applies immediately to all proposed actions described in this document under this initial disaster declaration FEMA-1378-DR-WV. The description of proposed actions by alternative is provided in Section 2.

1.3.1 Programmatic Process

FEMA is proposing an expedited process for assessing the potential environmental impacts of constructing temporary and transient emergency housing for disaster victims in Presidentially declared areas in West Virginia. A programmatic FONSI will be executed for actions covered by this PEA that would not result in significant impacts.

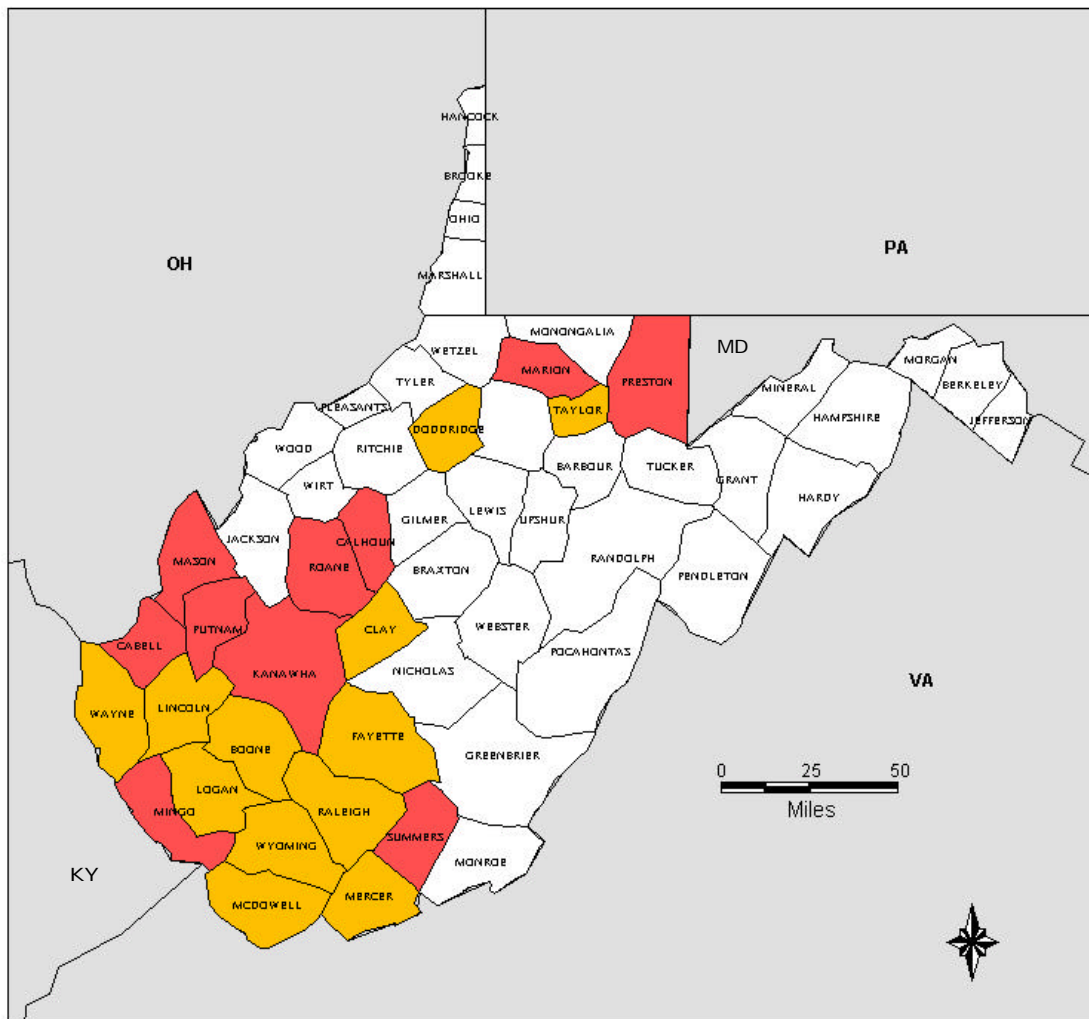
Under this expedited process, FEMA would assess each proposed group site in a Supplemental Environmental Assessment (SEA) using the Record of Environmental Review as guidance (Appendix B). This assessment would be conducted prior to initiation of the action (land disturbance), and any appropriate mitigation measures would be identified. For actions with minimal impacts, a memorandum will be prepared stating that the action, alternatives, potential impacts, and mitigation were reviewed and found to be fully and accurately described by the PEA and the PEA FONSI, and no further documentation is required to comply with NEPA. During the SEA process, if it is determined that additional mitigation conditions are required for a particular group housing site, a Supplemental FONSI or other environmental documentation, as appropriate, will be prepared to address the additional site-specific conditions.

1.4 Purpose and Need for Action

On May 16, 2001, heavy overnight rains caused widespread flooding in West Virginia, especially in the southern portion of the state. At the Governor's request, a Presidential Major Disaster Declaration (FEMA-1378-DR-WV) (Appendix A) was declared on June 3, 2001. This declaration designated six counties (Boone, Kanawha, Logan, Mercer, Raleigh and Wyoming) as eligible for Individual Assistance (Figure 1).

On July 8, 2001, flash flooding occurred in an additional eight counties, further extending damage already suffered in the state. Consequently, Boone, Cabell, Calhoun, Clay, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Preston, Putnam, Raleigh, Roane, Summers, Wayne and Wyoming counties were added to the declared disaster area. Subsequently, Doddridge and Fayette counties were designated for Individual Assistance on July 10, 2001, and Marion and Taylor counties were designated on July 16. Heavy rainfall during the period of July 28 through July 30, 2001 caused additional flooding. Greenbrier and Nicholas Counties were added for Individual Assistance on July 31, 2001, for a total of 24 counties designated for Individual Assistance. Over 2,500 homes and businesses were impacted, with 1,000 to 1,100 destroyed, and 1,500 to 1,600 receiving major damage.

FIGURE 1 - AREA OF DISASTER DECLARATION
FEMA-1378-DR-WV



Location Map



Legend

Counties Designated by Assistance Type
 All counties in the State are eligible for the HMGP

■ Individual Assistance	(10)
■ Individual and Public Assistance	(12)



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dr1378dec.mxd

As of August 6, 2001, FEMA had reviewed 11,002 requests for individual assistance. To provide emergency temporary housing for people displaced by flooding in West Virginia, FEMA is proposing to construct temporary and transient emergency disaster housing at a number of sites throughout the damaged areas. Because of the topography and geology of the area, a number of small, temporary group housing sites are expected. These sites are anticipated to be cluster-type sites that could accommodate approximately six to twenty housing units, contingent upon unit type and site size.

The large number of displaced people and subsequent applications for Individual Assistance emphasize the critical need for temporary and transient housing. The emergency assistance plan is to design a number of sites to accommodate between 50 and 500 temporary and transient manufactured homes to be constructed in phases, as needed. The purpose of the proposed action is to provide a mechanism to ensure compliance with applicable Federal, State, and local environmental laws and regulations. Further, the proposed action facilitates the timely and effective provision of temporary and transient emergency housing for disaster victims, while minimizing the potential for adverse environmental impacts.

1.5 Complimentary Programmatic Documents

1.5.1 Endangered Species Act

Section 7 of the Endangered Species Act of 1973 (Appendix B) requires FEMA to consult with the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to determine if proposed FEMA funded projects may affect threatened and endangered species and/or their critical habitat. FEMA Region III will initiate Informal Programmatic Consultation (IPC) with USFWS. As in other FEMA regions during disaster events, Region III anticipates that IPC will allow consultation for the analysis of projects grouped by either project type or location in lieu of consulting on each individual project. The group analysis of proposed projects will expedite the Section 7 consultation process and continue to protect listed species and provide timely assistance to disaster victims.

1.5.2 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 (NHPA) (Appendix B) requires a Federal agency with jurisdiction over a Federal, Federally-assisted, or Federally-licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places (NRHP). Prior to approval of an undertaking, the agency must afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertaking (36 CFR Part 800.1a).

1.6 Public Participation

The Draft PEA will be circulated to interested public and government agencies for review. In addition, a cumulative Public Notice (Appendix D) will be circulated. If an SEA is produced for a specific site/project, it will be circulated according to Center for Environmental Quality requirements (40 CFR Part 1506.6), as time allows (Appendix B). Responses to comments offering new information or changes to data concerning environmental impacts will be included. The period of public and governmental review will be 72 hours. If no comments are received on the Draft PEA and a FONSI is reached, the initial Public Notice will serve as

the final Public Notice. Anyone wishing to review the final documents may do so by contacting Gene Gruber, PE, Region III Environmental Officer at (304) 561-3258. A list of agencies that received a copy of the Draft PEA for review is included in Section 9.0.

2.0 DESCRIPTION OF PROPOSED ACTIONS AND ALTERNATIVES

This section describes the Proposed Action, the No Action Alternative, and one Alternative Action. All alternatives considered in this PEA assume that the FEMA action is required as a result of a major disaster declaration, the administration of the Act, and its implementing regulations in 44 CFR Part 206. Furthermore, each action is assumed to comply with the Act and FEMA's implementing regulations.

2.1 Alternative 1 – No Action

The No Action Alternative is maintaining the status quo with no FEMA funding for any actions and entails no construction or preparation of sites for temporary housing of flood victims. Consequently, people displaced by flooding would rent housing available on the open market within their neighborhood or would remain in housing provided by family members, friends, hotels or in facilities structurally unsafe or unsanitary. Over 90 percent of the regional rental housing was occupied prior to the flood due to the high demand for rental property. It has been estimated that as much as one third of the available vacant apartments are needed to house apartment dwellers who themselves have been displaced by flooding.

The No Action Alternative would forego the benefits of temporary housing for displaced individuals and result in continued suffering, including social and economic stresses associated with the flood damage. The No Action Alternative was eliminated from consideration, since it provided no relief for the victims of flooding in West Virginia.

2.2 Alternative 2 – Relocation Alternative

Under this alternative, disaster victims would be relocated to existing housing facilities outside of their neighborhoods, since the capacity of neighborhood alternative housing is not adequate to handle the number of displaced persons. This alternative is not considered desirable because of the additional stress to disaster victims resulting from relocation. Many flood victims lost their means of transportation as well as their homes, which keeps them from ready access to schools and work. In addition, the Relocation Alternative conflicts with Executive Order (EO) 12898 (Environmental Justice) (Appendix B). In accordance with EO 12898, the selection of feasible alternatives must emphasize the safety, comfort, and minimization of disruption to the lives of individuals requiring temporary housing. Victims of this flooding disaster have already endured significant loss and suffering. Therefore, eliminating the Relocation Alternative will avoid further compounding this tragedy.

2.3 Alternative 3 – The Proposed Action

The proposed action is to provide temporary emergency housing for people displaced by the flooding in southern West Virginia. Temporary housing at proposed sites would consist of manufactured housing as defined in Section 1.2. Two types of sites will be considered: 1) those that already support or can readily support mobile home or travel trailer facilities and can increase the number of temporary housing units they support; and, 2) sites which are

essentially undeveloped. Both types may require clearing for the construction of roads and placement of utilities (electric, telephone, sewer and water lines).

3.0 FEDERAL LAWS, REGULATIONS AND EXECUTIVE ORDERS

The following paragraphs provide a brief description of the major Federal environmental laws, regulations and EOs as identified and described in Regulatory Guidance for FEMA-1378-DR-WV (Appendix B), which typically apply to disaster-related activities. It should be noted that some activities might require additional compliance with other State and Federal laws and regulations.

3.1 National Environmental Policy Act

The National Environmental Policy Act ... “declared a National policy to use all practicable means and measures in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.” Implementing guidelines of NEPA establish a process to ensure that activities associated with major Federal actions are considered for impacts to the human and natural environment. NEPA provides for public participation and full disclosure of potential impacts that may result from those Federal actions. This PEA addresses those requirements under NEPA regulations (Appendix B).

3.2 Clean Air Act

The Clean Air Act (CAA), which was last amended in 1990, establishes National Ambient Air Quality Standards (NAAQS) for criteria air pollutants in order to protect and enhance the quality of the nation’s air resources, to promote public health and welfare, and to otherwise encourage and promote air pollution prevention and control programs. Section 176(c) of the CAA requires that Federal agencies assure that their activities are in conformance with Federally approved State Implementation Plans (SIPs) that were established to improve ambient air quality. On November 30, 1993, the Environmental Protection Agency (EPA) published its final General Conformity Rule to implement Section 176(c). EPA’s final rule addresses how Federal agencies are to demonstrate that activities they engage in conform to Federally approved SIPs. The State of West Virginia air quality standards are identical to the Federal standards. EPA has delegated its CAA enforcement authority to the West Virginia Department of Environmental Protection (WV DEP), Air Quality Division. Ambient air quality is monitored in various counties within the declared disaster area, by a network of monitoring stations maintained by the State (Table 1).

Table 1 - Locations of Air Pollutant Monitoring Stations

Pollutant	Counties with Monitoring Stations
Carbon Monoxide (CO)	Hancock and Ohio
Nitrogen Dioxide (NO ₂)	Wayne
Ozone (O ₃)	Hancock, Ohio, Monongalia, Berkeley, Wood, Cabell, Kanawha, Greenbrier
Lead (PB)	None
Particulate Matter (PM ¹⁰)	Hancock, Brooke, Ohio, Monongalia, Berkeley, Wood, Kanawha
Sulfur Dioxide (SO ₂)	Hancock, Brooke, Ohio, Marshall, Monongalia, Wood, Kanawha, Cabell, Wayne

To comply with the mandates of the CAA amendments, West Virginia has developed a SIP for air pollution control. The West Virginia SIP mandates that a new project must not result in an increase in volatile organic compounds or oxides of nitrogen emissions when compared to the No Action alternative in both long and short terms. The proposed action must also not result in any new violations or exacerbations of Federal or State ambient air quality standards.

3.3 Clean Water Act

The CWA is a widely encompassing statute regulating activities and discharges that may impact the chemical and biological integrity of the nation's waters. Under Sections 401, 402, and 404 (Appendix B), regulations have been established that often apply to activities undertaken by local communities during emergency disaster-related events. The WV DEP is the State agency responsible for determining desired water uses and promulgating surface water quality standards, as well as enforcing compliance with these standards.

Under Section 401 (Appendix B), a Water Quality Certification from DEP is required prior to any discharge into waters of the United States. This document certifies that the action complies with the state water quality standards.

Section 402 (Appendix B) establishes the National Pollution Discharge Elimination System (NPDES) and its stormwater pollution prevention permitting and monitoring program. The objective of the stormwater regulations is to prevent the discharge or run-off of pollutants into local water bodies. For any construction activities that would affect more than 5 acres, Section 402 requires a Storm Water Pollution Prevention Plan (SWPPP).

Section 404 (Appendix B) regulates the discharge of dredged or fill materials into navigable waters of the United States, including streams and wetlands. The United States Army Corps of Engineers (USACOE), Huntington District, regulates activities that may affect these waters. Any activity that may impact navigable waters must be coordinated with this Federal agency.

3.4 Endangered Species Act

Under Section 7 of the Endangered Species Act (ESA) (Appendix B), as amended, Federal agencies are required to consult with USFWS and NMFS, when applicable, to ensure that their actions are not likely to jeopardize the continued existence of any species listed as endangered or threatened or result in the destruction or adverse modification of critical habitats of such species.

3.5 National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA) (Appendix B), as amended, was passed by Congress to create a National Historic Preservation Program (NHPP). The NHPA established the Advisory Council on Historic Preservation (NCHP), State Historic Preservation Offices (SHPO), the National Register of Historic Places (NRHP), and the requirement for Federal agencies to identify, evaluate, nominate, and protect historic properties under the jurisdiction or control of the agency. Historic properties are defined as archaeological sites, standing structures, or other historic resources listed on, or determined potentially eligible to, the NRHP (36 CFR 60.4). Section 106 of the NHPA, as implemented by 36 CFR 800, requires Federal agencies to take into account the effect of their actions on any district, site, building, structure, or object that is included in or eligible for inclusion in the NRHP. Coordination under Section 106 must be completed prior to initiating any action.

3.6 Executive Order 11988, Floodplain Management

EO 11988 (Appendix B) outlines the responsibilities of Federal agencies in the role of floodplain management. Each agency shall evaluate the potential effects of actions on floodplains, and should avoid undertaking actions, which directly or indirectly induce growth in the floodplain or adversely affect natural floodplain values. Agency regulations and operating procedures for licenses and permits should include provisions for the evaluation and consideration of flood hazards. FEMA's policy states that manufactured homes, as temporary housing, may not be placed in the 100-year floodplain (Zone A). However, travel trailers may be placed in the 100-year floodplain since they can be readily moved.

3.7 Executive Order 11990, Protection of Wetlands

EO 11990 (Appendix B) directs Federal agencies to provide leadership in minimizing the destruction, loss or degradation of wetlands. Section 2 of this order states that, in furtherance of NEPA, agencies shall avoid undertaking or assisting in new construction located in wetlands unless there is no practical alternative.

3.8 Executive Order 12898, Environmental Justice

EO 12898 (Appendix B) requires that each Federal agency identify and address the effects of its programs, policies, and activities on minority and low-income populations. The function of this EO is to avoid disproportionately high and adverse public health or environmental impacts to the target populations. Further, EO 12898 also tasks Federal agencies to ensure that public notifications regarding environmental issues are concise, understandable, and readily accessible.

All forms of FEMA disaster housing assistance are available to any affected household that meets the conditions of eligibility. No Federal entity or official (or their agent) may discriminate against any individual based on race, color, religion, sex, age, national origin, disability, or economic status.

3.9 Noise

Noise, defined as unwanted or unwelcome sound, is Federally regulated by the Noise Control Act of 1972 (NCA) (Appendix B). Although the NCA tasks EPA to prepare guidelines for acceptable ambient noise levels, it only charges those Federal agencies that operate noise-producing facilities or equipment to implement noise standards. By nature of its mission, FEMA does not have statutes defining noise. The Federal Interagency Committee on Urban Noise developed land use compatibility guidelines for noise in terms of day-night average sound level (DNL) measured in decibels (dB). The EPA's guidelines (and those of many Federal agencies) state that outdoor sound levels in excess of 65dB DNL are "normally unacceptable" for noise-sensitive land uses such residences, schools, and hospitals. Most noise associated with flood-disaster projects is emitted from mechanical equipment used in repair, improvement, construction, and demolition.

3.10 Hazardous and Toxic Waste Regulations

Hazardous materials and toxic wastes are primarily regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (Appendix B), the Resource Conservation and Recovery Act (RCRA), and their reauthorizing amendments, the Superfund Amendments and Reauthorization Act (SARA) (Appendix B), and the Hazardous and Solid Waste Amendments (HSWA). The intent of these regulations is to remediate release of hazardous materials to the environment, regulate proper management and disposal of hazardous waste and materials, prevent and provide response to spills, manage solid wastes, and promote resource recovery. Objectives of both CERCLA and RCRA are to promote the protection of health and the environment as well as conserve valuable material and energy resources. Under these regulations, materials defined as hazardous or toxic must be managed under State and Federal permitting requirements for staging, handling, storage, treatment, and disposal to prevent release to the environment and impacts to human health and/or the environment.

4.0 AFFECTED ENVIRONMENT

4.1 Geology, Soil and Climate

Nicknamed the "Mountain State," West Virginia is very hilly and rugged, with the highest mean altitude (1,500 feet) of any state east of the Mississippi. Nearly all of the state is on the Allegheny Plateau, with the jagged Virginia–West Virginia line roughly following the eastern escarpment of the plateau (known as the Allegheny Front). Extremely irregular in outline, West Virginia has two narrow projections—the northern panhandle, which cuts north between Ohio and Pennsylvania, and the eastern panhandle, which cuts east between Maryland (with the Potomac River forming the state line) and Virginia. West Virginia's lowest and highest elevations are both located in the eastern panhandle, within the Appalachian ridge and valley country. The state's lowest point (240 feet) can be found near Harpers Ferry at the confluence

of the Shenandoah and Potomac Rivers, while the highest elevation of 4,860 feet is located at Spruce Knob.

The western two-thirds of West Virginia, known as the Appalachian Plateau Province, is comprised of relatively flat-lying rocks containing minable coal. The formations in the Appalachian Plateau are of very late Precambrian age (Catoctin Formation) with Paleozoic rock exposed westward. The majority of the Appalachian Plateau is comprised of Pennsylvanian and Permian strata with exposed rocks in the northern portion younger than those exposed in the south. Consequently, younger minable coal seams are found in the north and older seams are located in the south.

The eastern one-third of West Virginia is referred to as the Valley and Ridge Province, which is comprised of folded and faulted rocks with no minable coal. These formations date from Precambrian to early Mississippian eras. The oldest rock formations are located in the extreme eastern portion of the State and proceeding westward, become younger in age.

Although some natural gas has been obtained from the Valley and Ridge Province, the majority of natural gas (95 to 98 percent), as well as all the oil found in West Virginia, is located in the Plateau region. The Allegheny Front forms a complex and abrupt change in topography, stratigraphy, and structure between the Allegheny and Valley and Ridge Provinces. This boundary extends southwestward across the eastern portion of the State, passes through Virginia, and reenters West Virginia through southeast Monroe County.

From the Blue Ridge Mountains westward for approximately 20 miles lies the Great Valley. This relatively flat, agriculturally rich region is composed of complexly folded and faulted Cambrian and Ordovician limestone and dolomite with one prominent Ordovician shale (the Martinsburg Shale). The Great Valley ends at North Mountain and from that point to the Allegheny Front, approximately 50 miles, are a series of northeast-trending mountains and valleys. The rocks in this area of the Valley and Ridge range in age from late Ordovician to early Mississippian. Valleys are primarily composed of less-resistant shale and siltstone, while mountain ridges are mainly resistant sandstone and limestone. The structural geology of the Valley and Ridge is complex with extensive thrust faults and folds that contribute to the repetition of all the rock formations. In addition, three major allochthonous thrust sheets have displaced the surface and subsurface rocks westward in the order of 30 to 50 miles. There are no significant Mesozoic or Cenozoic rocks in the State, but Quaternary alluvium overlies most formations.

West Virginia is well drained. Primary rivers include the Tug Fork, Big Sandy River, New River, Kanawha, Little Kanawha, Cheat, and Monongahela, all of which flow to the Ohio. The New River and Kanawha combine to form the most important waterway entirely within the state.

West Virginia's climate is similar to other Mid-Atlantic states, and is generally of the humid continental type, with hot summers (except in the high elevations) and cool to cold winters. The average temperature is 72 degrees Fahrenheit in July and 32 degrees Fahrenheit in January. All four seasons are nearly equal in length, though mountainous regions may have slightly longer winters.

4.2 Hydrology and Water Quality

4.2.1 Groundwater

Ground water in the Appalachian Plateaus and Blue Ridge Physiographic Provinces moves mostly in a network of narrow fractures within a few hundred feet of the land surface, and drains toward the nearest stream. Wells normally tap only a few of the many local fractures. Ridgetops bound each local aquifer, which generally are affected only by local contaminant sources. In small areas of the basin where caves and solution cavities in limestone bedrock are common, wells can have high yields but are susceptible to contamination from fecal bacteria, pesticides, and other toxic chemicals.

- Radon concentrations in the Blue Ridge were among the highest in the Nation. Almost 90 percent of wells sampled there exceeded the proposed U. S. Environmental Protection Agency (USEPA) primary drinking water standard of 300 picocuries per liter (pCi/L). One-third of these wells contained more than 4,000 pCi/L, the proposed alternate drinking-water standard. Radon is a radioactive gas that forms during the decay of natural uranium.
- Modern well construction can prevent fecal bacteria from reaching drinking water in most areas of the basin. Bacteria were frequently detected only at older wells.
- Potentially explosive concentrations of methane were found in water at 7 percent of wells in the coal region of the Appalachian Plateaus.
- Nutrients, pesticides, and volatile organic compounds were detected in low concentrations throughout the basin. In the Blue Ridge, however, water from more than 50 percent of wells contained pesticides, an indication that the ground water is vulnerable to contamination.
- In the Appalachian Plateaus, iron and manganese concentrations exceeded USEPA drinking-water guidelines in at least 40 percent of the wells and in about 70 percent of wells near reclaimed surface coal mines. Elevated sulfate concentration and slightly acidic water were more common at wells within 1,000 feet of reclaimed mines than elsewhere.

All or portions of the Upper and Lower New; Upper and Lower Kanawha; Upper and Lower Guyandotte; Tug Fork; Coal; and Twelvepole; Big Sandy; Lower and Middle (north and south) Ohio; Greenbrier; Gauley; Elk; Little Kanawha; West Fork; Monongahela; Youghiogheny; Cheat; Tygart; Valley; and Dunkard watersheds are found in the declared disaster area. The rural populations of these areas use either individual groundwater wells or other sources such as springs, cisterns, and bottled water as their source of drinking water. There are no sole source aquifers within the declared disaster area.

4.2.2 Surface Water

Surface water resources within the declared disaster area are limited to steep trapezoidal first, second, and third order stream systems (with the exception of the Bluestone River), which empty into larger river systems (e.g. Guyandotte, Tug Fork, New). Additionally, man-made ponds, reservoirs, and sedimentation basins also comprise surface water resources.

4.3 Floodplain

The 100-year floodplain designates the area subject to inundation from a flood having a 1.0 percent chance of occurring in any given year. This flood is referred to as the “100-year flood” or “base flood”. The frequency of such flooding may be more or less often than once every 100 years. In circumstances known as “critical actions,” the regulated flood prone area is defined by the 500-year floodplain. The 500-year floodplain designates the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year.

Floodplains are designated on National Flood Insurance Rate Maps (FIRMs) or Flood Hazard Boundary Maps (FHBMs) for communities that participate in the National Flood Insurance Program (NFIP). The NFIP and its implementing regulations (44 CFR 59 through 77) stipulate minimum standards for floodplain development in communities that participate in the program. Local governments incorporate these standards, or in some cases more stringent standards, into their floodplain ordinances. In addition to mapping locations of 100-year and 500-year floodplain boundaries, many FIRMs and FHBMs map the base flood elevation, which is the estimated elevation of a 100-year flood. FIRMs and FHBMs delineate floodplains with other descriptors; the most important of these are the floodway and the 100-year coastal, high hazard floodplain. The floodway is defined as the river channel or other watercourse and adjacent land areas that are required to remain free from development. These areas function to discharge the base flood without cumulatively increasing the water surface elevation.

4.4 Biological Resources

This section provides an overview of the biotic resources that may be found within the project area. Because of the nature of this PEA, the biotic communities described herein are generalized and were identified through a limited literature review. The need to place temporary housing outside the 100-year floodplain will place potential sites within the available upland areas.

4.4.1 Wildlife

More than 80 percent of West Virginia’s wildlife species are classified as non-game, including: 261 species of birds, 51 mammals, 43 amphibians, 42 reptiles, 130 fishes, 128 butterflies and thousands of other invertebrates.

Eleven species of animals and five plants occurring in the 24-county declared disaster area are currently listed by the U.S. Fish & Wildlife Service as either threatened or endangered (Appendix B). Two species, the Cheat Mountain salamander (*Plethodon nettingi*) and the flat-spined three-toothed land snail (*Triodopsis platysayoides*), are found in limited habitats only in West Virginia.

4.4.2 Vegetation

The declared disaster area is located within the Allegheny Plateau Section of the Appalachian Plateau physiographic province of West Virginia. Ridge tops are rugged and have steep slopes with deeply incised narrow valleys. Numerous “hollows” exist where smaller streams have eroded the mountainsides. A dendritic drainage system has developed over the flat-lying sedimentary rocks within the area.

Approximately 80 percent of West Virginia is Forest Land. Oak-Hickory is the dominant forest group comprising 77 percent of the state's timberland. The average forest age forest is between 65 and 80 years. Pine forest communities often form after deciduous forest communities are harvested or lands are cleared. Vegetation communities form the basis for wildlife habitats. Many animals select specific vegetation community types for all or portions of their life cycle.

Dominant tree species in the Oak-Hickory forest lands include: red oak (*Quercus rubra*), white oak (*Q. alba*), post oak (*Q. stellata*), black oak (*Q. velutina*), shagbark hickory (*Carya ovata*), bitternut hickory (*C. cordiformis*), red maple (*Acer rubrum*), sassafras (*Sassafras albidum*), basswood (*Tilia americana*), yellow-poplar (*Liriodendron tulipifera*), and black locust (*Robinia pseudoacacia*).

Woody plants beneath the canopy cover may include flowering dogwood (*Cornus florida*), serviceberry (*Amelanchier arborea*), mountain laurel (*Kalmia latifolia*), blueberry (*Vaccinium* spp.), witch hazel (*Hamamelis virginiana*), and greenbrier (*Smilax* spp.).

4.4.3 Listed Species (Threatened and Endangered)

A list of federally and state listed threatened and endangered species that may occur within the project area was compiled through information procured through the West Virginia Nonage Wildlife and Natural Heritage Program (Appendix B) and the USFWS (Appendix B). The following is a summary of species that may occur at the types of upland sites best suited for temporary housing within the 24-county project area.

Animals

Bald Eagle (*Haliaeetus leucocephalus*) – The first documented bald eagle nest in West Virginia was discovered in 1981. Currently, the bald eagle is known to nest at eleven sites in the Mountain State. Nest sites are located in Grant, Hardy, Hampshire, Wood, Pendleton and Mineral counties. There are records of non-breeding eagles from most areas of the state.

Bald eagles usually nest in tall trees near large streams or lakes, and are seldom found far from water. Migration routes follow river systems or mountain ranges, which in West Virginia, run in a general north-south direction. The bald eagle often winters along large interior or coastal bodies of water that remain free of ice.

Clubshell Mussel (*Pleurobema clavaI*) – Have a wedge-shaped shell resembling the head of a golf club. The clubshell is up to 7.6 cm (3 in) long with straw yellow to brown with green rays and white nacre in color. They can be found in the Ohio River basin from Illinois to Alabama, in Virginia, West Virginia, Pennsylvania and Michigan. These freshwater mussels live in a variety of substrates including sand, gravel, cobble and mixed materials on the bottoms of streams and rivers. The Clubshell generally requires free-flowing, clean, well-oxygenated water. They can live in a variety of environments ranging from large rivers to shallow streams. Their diet consists of a variety of microscopic organisms including algae, diatoms, phytoplankton, zooplankton and detritus, which they filter out of the water.

Eastern Puma (*Puma concolor cougar*) – The Fish and Wildlife Service and the U.S. Forest Service jointly completed a 5-year survey in an attempt to determine the presence of self-sustaining cougar populations in the southern Appalachian Mountains from Virginia to

Northern Georgia. The primary survey method was to search for cougar tracks in the snow, especially in remote areas such as closed sections of the Blue Ridge Parkway. Other utilized techniques were scent stations using cougar urine, catnip, or other scents, and recorded sounds such as cougar screams, predator calls, and deer bleats. Although many promising leads were pursued, no concrete evidence was ever obtained for the existence of eastern cougar populations.

The cougar shows no preference for specific habitat types. The primary need is apparently for a large wilderness area having an adequate food supply. Male cougars of other subspecies have been observed to occupy a range of 25 or more square miles, and females from 5 to 20 square miles.

Fanshell Mussel (*Cyprogenia stegaria*) – Have a roundish shell under 8.1 cm. (3.2 in) long with light green or yellow with green ray and nacre (inner shell surface) silvery white in color. They can be found in the Ohio River basin from Illinois to Alabama, Virginia, West Virginia and Pennsylvania. These freshwater mussels live in a variety of substrates including sand, gravel, cobble and mixed materials on the bottoms of streams and rivers. They generally require free-flowing, clean, well-oxygenated water. The fanshell prefers to live in the sediment of large riverbeds. Their diet consists of a variety of microscopic organisms including algae, diatoms, phytoplankton, zooplankton and detritus, which they filter out of the water.

Flat-Spired Three-Toothed Land Snail (*Triodopsis platysayoides*) – This snail is known to inhabit a very restricted area of the Cheat River Gorge in Monongalia and Preston counties. There are 19 known localities for the species. Eighteen of these sites are located in an area only 3.4 km x 5.4 km (2.4 mi x 3.8 mi) in size. Little information is available on the population trends of this animal, but populations appear to be stable at this time.

This snail is usually associated with outcroppings of sandstone known as the Upper Connoquenessing Sandstone. Areas where this snail occurs are usually wooded and dominated by sandstone cliffs or areas of large sandstone boulders. The snails are often found in cracks and crevices in the rocks or in small cave-like structures. At one site, the snail is associated with a cave in the limestone layer beneath the sandstone.

Indiana Bat (*Myotis sodalis*) - West Virginia is on the edge of the range of this species, but significant numbers of these bats hibernate in certain West Virginia caves. This bat has been reported from caves in the eastern highlands of the state, and populations appear to be increasing due to protection efforts. Until 1995, the Indiana *Myotis* was not documented as a summer resident of the state, however, during the summer of that year, several male bats were captured in Tucker County.

The range of the Indiana *Myotis* includes much of the midwestern and eastern United States from the Ozark Mountains to southern Wisconsin, Michigan, central Vermont, and northwestern Florida. In West Virginia, this species has been reported from caves in Greenbrier, Hardy, Monroe, Pendleton, Pocahontas, Preston, Randolph, and Tucker counties.

Caves are important for the Indiana *Myotis*. During the winter, large numbers gather in a few caves, which provide suitable conditions for hibernation. During the summer, females form small colonies under the loose bark of trees and raise their young. Males also appear to form small colonies in trees, either in hollow trees or under loose bark. Early studies indicated that

wooded areas along rivers were the preferred feeding areas, but recent studies suggest that upland forests are also used.

Northern Riffleshell Mussel (*Epioblasma torulosa rangiana*) – Is 5.1 cm (2 in) in length with a yellow-brown, oblong shell with green rays. The female has an expanded front edge. This species is found in the Ohio River and Great Lakes basins from Michigan and Ontario, into West Virginia and west to Illinois. They live in a variety of substrates including sand, gravel, cobble and mixed materials on the bottoms of streams and rivers. They generally require free-flowing, clean, well-oxygenated water. The northern riffleshell prefers swift flowing riffles and runs of smaller streams. Their diet consists of a variety of microscopic organisms including algae, diatoms, phytoplankton, zooplankton and detritus, which they filter out of the water.

Pink Mucket Pearly Mussel (*Lampsilis abrupta*) – The male of this species is oval shaped while the female's shell is very inflated, almost spherical, and can be up to 10.8 cm (4.25 in) in length. The shells have light yellow to brown rays with the nacre white to salmon in color. These mussels can be found in the Mississippi-Ohio River basin from Missouri and Tennessee through West Virginia and Pennsylvania. They live in a variety of substrates including sand, gravel, cobble and mixed materials on the bottoms of streams and rivers and require free-flowing, clean, well-oxygenated water. The pink mucket pearly mussel prefers to live in the sediment beneath large rivers. Their diet consists of a variety of microscopic organisms including algae, diatoms, phytoplankton, zooplankton and detritus, which they filter out of the water.

Tubercled-Blossom Pearly Mussel (*Epioblasma torulosa torulosa*) – Not much is known about this obscure species, believed to be extinct in West Virginia. Males and females are yellowish brown with green rays and differ dimorphically. This mussel is found in medium to large rivers in gravel riffles. This mussel was known to exist in a variety of substrates including sand, gravel, cobble and mixed materials on the bottoms of streams and rivers and, in general, require free-flowing, clean, well-oxygenated water. As with other fresh water mussels, diet would consist of a variety of microscopic organisms including algae, diatoms, phytoplankton, zooplankton and detritus, which they filter out of the water.

Plants

Running Buffalo Clover (*Trifolium stoloniferum*) – The suspected distribution of running buffalo clover includes the states of West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas and Arkansas; however, to date the species has not been recorded in Illinois, Kansas, or Arkansas. In Missouri, running buffalo clover was found growing on a mound of topsoil, but the source of the topsoil could not be determined. This plant is most frequently found in habitats with filtered sunlight that have experienced recent disturbance. It is a common species of cemeteries, Indian mounds, dooryards, historical homesites, mowed paths, jeep trails, grazed ravines and woodlots.

Virginia Spirea (*Spiraea virginiana*) – Virginia spiraea is found on 24 stream systems in seven states (Georgia, Tennessee, North Carolina, Kentucky, West Virginia, Virginia, and Ohio). Of these known sites 14 populations have fewer than 10 clumps of the shrub, 8 consist of 10-50 clumps and only 3 contain more than 50 clumps. Six extant populations occur in West Virginia with an estimated 1,000 to 4,000 individuals, by far the most of any state.

Plants occur in West Virginia along the Gauley, Meadow, Bluestone, Greenbrier and Buckhannon rivers. The Gauley River gorge below Summersville Dam harbors what is thought to be the world's largest population of this plant.

Habitat is usually rocky, flood scoured banks of high-energy (high gradient) streams or rivers. Flood scouring may be important to this species by preventing canopy closure and creating river wash deposits, thereby decreasing competition from larger trees and providing an appropriate rooting medium.

4.5 Historic Properties

Under the NHPA, historic properties include prehistoric or historic sites, districts, buildings, structures or objects. Since the number and locations of potential temporary housing sites have not been determined, historic properties that may be impacted by proposed construction cannot be identified. The 24-county declared disaster area is rich in historic and prehistoric archaeological sites and structures, most of which are located along permanent waterways. As potential project locations are identified, the existing site database maintained by the West Virginia Division of Culture and History (WV DCH) and published technical reports will be reviewed to identify known historic properties. In addition, a site assessment by a qualified archeologist will be undertaken to identify and coordinate all historic properties that may be impacted by the project. The list of National Register sites in the 24 county area is included in Appendix E. Potentially significant historic properties will either be avoided or mitigated in compliance with 36 CFR 800.

4.6 Hazardous Materials and Waste

All potential construction or expansion sites for temporary housing will require a Phase I Environmental Site Assessment for hazardous and toxic waste. This assessment consists of a search of existing State and Federal databases for known problem sites and spill locations, review of historic aerial photographs for evaluation of land use, and on-site evaluation. Any structures that must be demolished as part of the project will be evaluated for the presence of lead-based paint, asbestos, and other regulated materials to insure proper handling and disposal.

4.7 Air Quality

As described in Section 3.2, the CAA (Appendix B) requires the EPA to establish NAAQS (Appendix B) for pollutants considered harmful to public health and the environment. The EPA office of Air Quality Planning and Standards has set NAAQS for six principal pollutants, ("criteria" pollutants) that include carbon monoxide, nitrogen dioxide, sulfur dioxide, ozone, lead, particulate matter with particulate diameters of 10 microns or less, and particulate matter with particle diameters of 2.5 microns or less.

The CAA (Appendix B) also requires EPA to assign a designation to each area of the United States regarding compliance with the NAAQS (Appendix B). The EPA categorizes the level of compliance or noncompliance as follows:

- Attainment – area currently meets the NAAQS

- Maintenance – area currently meets the NAAQS, but has previously been out of compliance
- Nonattainment – area currently does not meet the NAAQS
- There are no nonattainment areas in West Virginia.

The CAA, under 42 U.S.C. 7506(c)(1), prohibits Federal agencies from funding, permitting, or licensing any project that does not conform to an applicable SIP. The purpose of this General Conformity requirement is to assure that Federal agencies consult with state and local air quality districts. Consultation will ensure that regulatory entities are informed of the anticipated impacts of the Federal action, and can include expected emissions in their SIP emissions budget.

In order to implement this requirement, EPA promulgated General Conformity regulations in 40 CFR, Part 93. Pursuant to these regulations, a Federal agency must make a General Conformity Determination for all Federal actions in nonattainment or maintenance areas where the total of direct and indirect emissions of a nonattainment pollutant or its precursors exceeds de minimis levels established by the regulations.

In addition to the de minimis thresholds for ozone precursor pollutants, a conformity determination is also required if the emissions increase due to the project equals or exceeds ten percent of the total emission inventory for the entire nonattainment area. If either of these thresholds is met, the Federal agency must issue a General Conformity Determination stating how the project conforms or will conform to the SIP prior to undertaking the action.

4.8 Noise

Noise is most often defined as unwanted sound. Sound levels are easily measured, but wide variations in amplitude and the variability of human perception of sound complicate impact analysis.

Although sound levels are subjective, Federal and local governments have established noise guidelines and regulations to protect people from adverse effects associated with noise. In general, residential units and other noise-sensitive land uses are “clearly unacceptable” in areas where the noise exposure exceeds 75dB DNL, “normally unacceptable” in areas where noise falls between 65dB to 75dB DNL, and “normally acceptable” in areas where the DNL is 65dB or below. An action would be considered significant if the action substantially increased the ambient noise levels for adjoining areas with noise sensitive uses like residences, schools, hospitals, churches, and recreation areas.

Ambient noise levels are site-specific and must be determined accordingly. Potential temporary housing sites could include rural and urban locations with substantially different ambient noise levels.

4.9 Socioeconomic Resources

Land use and land cover in the declared disaster area are typical of a rural environment in rugged terrain. There are steep to very steep valleys and ridgetops mostly covered by deciduous forest. The ridgetops have small areas of agricultural and rangeland interspersed

throughout forested areas. Rurally, sparse residential development is found primarily along the ridgetops or in valleys, but housing density increases closer to towns.

Land use surrounding the declared disaster area consists of both residential and commercial uses. Economic trends for the state of West Virginia show that while the State is experiencing some economic growth compared to prior years, growth continues to fall behind that experienced by other states nationwide. In addition, due to employment declines in industries such as coal mining, construction, chemical products, and other goods-producing jobs, West Virginia continues to lose residents to more prosperous metropolitan areas in other states (Bureau of Business & Economic Research, 2001).

The most obvious cause in employment and population decline is attributable to the decline in the coal mining industry. With improved technology, fewer workers are needed to meet production needs. The majority of communities located within the disaster area were historically settled along streams and valleys as coal mining communities. As coal mines close and the work force is reduced, the primary source of income is removed from the economy (Bureau of Business & Economic Research, 2001).

Regional and local isolation magnifies the effects of unemployment in the study area. Living in the declared disaster area and working outside of the area is difficult because of inefficient roadway systems that limit access to the interstate highways. Economic diversification has occurred in some portions of the disaster area, and the expansion of employment opportunities has somewhat decreased economic dependence on the coal industry. However, the prevalence for diversified employment opportunities is not frequent, nor have opportunities occurred uniformly throughout the declared disaster area (Bureau of Business & Economic Research, 2001).

The average poverty threshold for a family of four in the United States in 1990 was \$12,674. Within the declared disaster area, more individuals and families were in poverty in 1990 than in 1980 (West Virginia Census Bureau, 1990).

4.10 Environmental Justice

Within the declared disaster area, the overall population is more than 90 percent white and less than 10 percent minority. In 1990, McDowell County had the highest percentage of minority population of all effected counties. As discussed previously, the number of individuals and families living below the poverty threshold increased between 1980 and 1990. In 1990, 16.1 percent of West Virginia families were living below the poverty threshold. In comparison, within the declared disaster area more than 25 percent of the population lives below that threshold (West Virginia Census Bureau, 1990)

Disaster recovery for minority and low-income groups is exacerbated by loss of personal vehicle transportation, and lack of financial resources to replace lost homes, cars and other personal property. Each of these discrete minority groups has unique cultural traditions; therefore, sensitivity and consideration of these traditions must be assessed in the placement and design of temporary housing.

4.11 Traffic

Because of the area's rural character, traffic congestion is not generally a problem; however, some of the more populated areas may experience heavier traffic at peak traffic times.

4.12 Utilities

The region offers services from a variety of providers that include potable water, sanitary wastewater treatment, municipal waste collection, natural gas, electricity, telephone service, fiber optics, and internet access. In some cases, services may only be available adjacent to proposed group housing sites, and will be extended to these sites.

The majority of residents within the declared disaster area are supplied electricity by Allegheny Electric Power. Drinking water is primarily available from municipal wells, individual wells, cisterns, or bottled water. Sewage is managed by some large service districts, small municipal plants, on-site septic systems, or straight piping directly into creeks.

4.13 Safety and Security

Safety and security programs involve the physical and procedural measures to protect people and property. This includes loss prevention and control, which identifies risks or hazardous conditions that may threaten real and personal property and/or the safety of residents or the public. These conditions may include, but are not limited to, appropriate fire protection systems, security deficiencies, and the inadequacy of emergency plans and procedures. Security needs should be appraised and implemented as necessary for each group housing site.

An important function of security is an effective protection program. The three essential elements to be included in the design of an effective protection program are education, prevention, and detection. Education and prevention are the most important factors because risk avoidance is the key to good security protection. Residents should be encouraged to be security conscious. To that end, a security education program should be put in place to ensure public understanding, awareness, and need of a good security protection program.

5.0 PROJECT IMPACTS

5.1 No Action Alternative

The “No Action” alternative will not impact the existing environment as described above. “No Action” would not entail construction or preparation of sites for temporary emergency housing of flood victims, nor would it allow the Federal government to adequately address the urgency for providing temporary and transient emergency housing for disaster victims. Consequently, people displaced by floodwaters would have to remain in the temporary housing they have found with friends or family members, hotels, apartments, rental houses, or shelters. The “No Action” alternative would forego disaster assistance, would not be acceptable to the local community or local interests, and would result in deterioration of property values in the project area. Flood victims would continue to suffer social and economic stresses related to the disaster. The “No Action” alternative is not a viable plan.

5.2 The Proposed Alternative

The proposed alternative would provide emergency temporary housing as defined in Section 1 of this PEA for people displaced by the flooding in southern and western West Virginia. Housing units would be placed on proposed sites at a density of 6 – 8 units per acre. Site

preparation would include clearing, grading, construction of roads, and any additional construction activities necessary for the placement of utilities (temporary electrical hookups, telephone, sewer and water lines). All construction activities will be in accordance with all applicable local, State and Federal laws, regulations, EOs, and permits in implementing the proposed alternative.

5.2.1 Geology and Soils

The proposed alternative may require construction tasks described in Section 5.2. The site selection process, including the RER, will facilitate identification and avoidance of any protected or problematic geological resources. Clearing and grading will change the existing soil stratification and topography; however, this is not anticipated to be a significant impact. Loss of vegetation may increase short-term soil erosion, but this condition will be mitigated by applying appropriate control measures during construction.

5.2.2 Hydrology and Water Quality

5.2.2.1 Ground Water

Potential impacts to groundwater quality would involve both surface waters, which receive their base flows from groundwater, and wells used for potable water. Groundwater resources in the declared disaster area are related to geologic formations containing aquifers including fractured sandstone, which is one of the best sources of groundwater. Construction activities may create additional fractures or blockages in these water-bearing strata and may alter the quantity of groundwater. Consequently, local wells and streams could experience temporary or permanent loss of groundwater quantity. However, sometimes fracturing can also increase the water capacity of a particular geologic stratum.

Groundwater quality may also be affected by construction activities. Wells in sandstone could possibly experience reduced groundwater quality due to pollutants and sediment in surface waters infiltrating groundwater systems.

In general, however, construction activities associated with the development of group housing sites are not expected to have a long-term adverse impact on groundwater resources. Short-term impacts, such as increased turbidity may occur.

5.2.2.2 Surface Water

Preparation of the proposed temporary emergency housing sites may require removal of vegetation throughout a particular site. Vegetation cover inhibits erosion and reduces stream sedimentation, and its removal may result in direct and indirect impacts to associated downstream drainage systems. To minimize these impacts, a SWPPP would be designed with specific construction measures to reduce or eliminate run off impacts, and the construction contractor would be required to implement measures to prevent spills of chemicals or other materials that might enter the drainage. In addition, a NPDES permit may be required during group site development. With implementation of an SWPPP and Best Management Practices (BMPs), it is unlikely that the proposed alternative would have a significant effect on the quality of surface waters.

5.3 Floodplain

The proposed sites will be located outside the-year floodplain. Therefore, there will be no adverse impacts to the 100-year floodplain from the occupancy and minor modifications of the affected project areas.

5.4 Biological Resources

Sites chosen for the proposed alternative will be located in upland areas. These relatively small areas support regionally common species of flora and fauna, and will be near flood impact areas that have likely already been influenced by human activities. Site conditions will be documented using both the RER and consultation with State and Federal resource agencies. Implementation of the proposed alternative may result in temporary, though reversible, impacts on area biological resources, which are described in more detail below.

5.4.1 Wildlife

Construction on the proposed sites will have minor adverse impacts on local wildlife by reducing the amount of suitable habitat. Mobile fauna will likely be displaced and forced to migrate away from disturbances generated by construction. Other less mobile species may experience some mortality. Upon completion of construction, however, there will be an influx of similar species common to areas influenced by human habitation. The proposed project will not adversely impact regional species richness, diversity, or unique faunal assemblages.

5.4.2 Vegetation

Preparation of the proposed temporary emergency housing sites may require removal of vegetation. Upon completion of construction, invasive and planted species of types common to disturbed areas will recolonize the sites. Informal consultation with State and Federal resource agencies will ensure that the project does not adversely impact regional species richness, diversity, or unique floral assemblages.

Permits from the USACOE and the WV DEP may be required if watercourses or wetlands are unavoidably impacted. Mitigation for these impacts may be necessary at the Federal, State, and local level. Coordination with the resource agencies and other authorities will be ongoing to maintain compliance with environmental statutes.

5.4.3 Listed Species (Threatened and Endangered)

The USFWS has determined that the proposed group housing, as discussed in this PEA, will not have any impacts on any listed species (Appendix F). BMPs (avoidance, minimization, and mitigation), inherent in this PEA and followed in the initial screening and environmental review process, will ensure that no impacts to any threatened and endangered species will occur. If any listed species or critical habitat does occur on a proposed group housing site, the project will proceed only after a site-specific mitigation plan is agreed upon by all State, Federal and local interests, in accordance with this PEA, ESA, and any other applicable regulations.

5.5 Historic Properties

A site assessment will be undertaken to identify all potentially significant historic properties that may be impacted by project construction. Potential impacts to historic properties will be identified and coordinated with the WV DCH and, in addition, significant historic properties will be avoided or mitigated for in compliance with 36 CFR 800 (Appendix F).

5.6 Hazardous Materials and Waste

A preliminary Phase I ESA for hazardous and toxic materials will minimize the potential for discovery of regulated materials during construction. Hazardous and regulated materials that may be utilized during construction will be stored and disposed of in accordance with the applicable local, State, and Federal regulations. BMPs and proper implementation of these regulations will prevent mishandling of hazardous materials and wastes.

5.7 Air Quality

Construction activity associated with the proposed project will produce pollutant emissions. Heavy equipment will produce small amounts of hydrocarbons and exhaust fumes that will impact air quality. However, the location and magnitude of construction of temporary housing facilities cannot be identified at this time.

For the 24 counties in the Federally declared disaster area, it is anticipated that the concentrations of construction pollutants will not cause the counties to reach nonattainment status. Contractors will be required to keep vehicles and equipment in good working order to minimize pollutant emissions and comply with the SIP throughout the declared disaster area.

5.8 Noise

Noise levels in and near project areas will increase due to construction and installation of housing units, but these impacts are transient and are not anticipated to be adverse. Once housing is established, additional noise will be generated by vehicles and activities of people inhabiting the units. Although noise levels of project sites may increase because of habitation, existing ambient noise levels cannot be identified at this time because project locations may include rural as well as urban sites. However, long-term adverse impacts are not expected to result at any type of site location.

5.9 Socioeconomic Resources

The proposal to provide temporary housing in existing or newly developed mobile home parks will alleviate, to some extent, the need for immediate housing among displaced flood victims. Sites chosen for development will be required to provide necessary infrastructure for roads, utilities, and police and fire protection. The ability of existing providers to meet the increased demand for publicly provided services is unknown in the absence of a specified site to evaluate for socioeconomic impacts.

The provision of housing is fundamental to the local economy's recovery. When displaced persons are adequately housed, they will be able to regain some stability in their lives and will return to their employment. Employment will generate increased demand for goods and services as well as help to provide those goods and services. Implementation of the proposed

alternative will not have any adverse impacts on the economic status of neighborhoods or local areas.

5.10 Environmental Justice

The development of temporary or permanent housing by FEMA should take into account the cultural traditions of the ethnic and cultural groups affected by the disaster. Each group has a cultural tradition of “neighborhood” which is distinctive. Both the siting and design of disaster relief housing should address the cultural and social needs of both flood victims, and the existing communities into which individuals would be relocated. Designing group sites in a manner that is sensitive to social and cultural needs will help to ameliorate potential racial or ethnic tension and promote more rapid community recovery.

5.11 Traffic

Traffic from the construction of temporary housing would include daily workers and supply trucks, minor increases in traffic during construction would be experienced. Traffic increases would be localized, and would not exceed limitations of the current transportation network infrastructure. Greater impacts could result from modifications to traffic infrastructure resulting from the introduction or relocation of utilities services and construction of access roads for the temporary housing developments:

- 1) In some cases, local street widths may need to be reduced temporarily to permit construction adjacent to these roadways; or modifications to the actual roadway may be necessary.
- 2) Due to limited space available, lateral clearance (e.g. normal shoulder widths) would be constrained in some work areas.
- 3) Speed limits would be reduced adjacent to certain work areas because of geometric constraints necessary to permit simultaneous traffic operation and construction in the same area.
- 4) Temporary signing would be employed at times.
- 5) Local streets could be partially closed for short periods to permit utility relocations or access road construction. Operations would be expected to allow one-half of each facility to remain open.
- 6) Detour routes may be necessary where local streets are temporarily closed.

Impacts to motorists would consist of temporary delays and disruptions to normal traffic patterns. However, construction of temporary housing in both developed and undeveloped areas could encourage intersection rebuilding, road expansions, new signal timings, and other improvements. Consequently, the temporary negative impacts delineated above may be offset in the long run by positive, permanent improvements to traffic flow.

5.12 Utilities

Specific information for proposed sites must be provided by city or county engineering or planning departments. Since some of the sites would likely be located in undeveloped areas,

or outside a city's jurisdiction, the information provided would necessarily reflect the level of service in the area surrounding the site.

The total number of utilities users would not show significant fluctuation, since one of the purposes for constructing temporary housing is to allow residents to remain in the same general area of their residences and not be forced to relocate great distances. However, interruptions of utility services may occur during tie-ins of existing utilities to the temporary housing developments. These interruptions would be temporary and localized and are not expected to impact large numbers of users.

5.13 Safety and Security

Temporary housing developments should be designed to serve all population groups, including persons with disabilities. Design should clearly define neighborhood boundaries, clearly identify public and private spaces, and create a clearly identified neighborhood entry. By using these concepts of defensible space, staff and residents can identify people who belong in the development. Clearly defined boundaries and entries notify the public that they are entering private space and leaving the public domain. Landscaping is one means of defining boundaries. Limiting the number of drive through streets can also control access to the development.

In addition, site lighting should be evaluated and adequate to eliminate resident annoyance and increase security. It should ensure well-lit passage to all homes and on-site facilities. Adequate site lighting is important for safety and security because it discourages crime and exposes unsafe conditions to pedestrians and traffic.

Access for emergency vehicles must be maintained. In connection with this, parking should be close to individual homes for maximum safety and convenience, because inadequate parking makes access difficult not only for some residents but for emergency vehicles as well.

A disaster plan for the temporary housing development should be considered. The disaster plan is a set of written procedures for dealing with emergencies that should cover such situations as fire and explosion; hurricane, tornado, and other natural disasters; release of toxic materials, etc. The emergency/disaster plan should be updated whenever changes in the plan occur. Proposed and actual revisions should be reviewed in detail with residents.

6.0 MITIGATION

Mitigation measures such as those listed below may be warranted for a specific site. Any requirements for mitigation would be determined based on a site-by-site analysis.

1. Temporary housing sites shall be dismantled, and site restoration work will be coordinated with the site owner, once the need for emergency housing for disaster victims no longer exists. However, if the current or subsequent property owners of any of the sites evaluated in this PEA and SEA wish to convert any or all of the sites used for temporary emergency housing to permanent housing sites, the property owner is required to hold a Public Hearing and consider the public's comments prior to the action. Compliance with all local planning and zoning processes will be required.
2. Preparation (clearing and grading) of the proposed temporary emergency housing sites may require the removal of vegetation and may increase short-term soil erosion.

Appropriate erosion control measures will be used during construction. Upon completion of construction, native species will be used to revegetate the site. Informal consultation with State and Federal resource agencies will ensure that the project does not adversely impact regional species diversity.

3. Wetlands shall be identified and avoided prior to any construction activities. Section 404 permits will be obtained prior to any construction activity, and all permit conditions will be incorporated into the project design or implementation.
4. Under the National Pollution Discharge Elimination System (NPDES) general permit, a Stormwater Pollution Prevention Plan (SWPPP) will be prepared for the proposed sites. A Notice of Intent (NOI) and an Environmental Protection Agency (EPA) form 3510-6 will be submitted to the appropriate agency at least 48 hours prior to any ground-disturbing activity.
5. No historic or cultural remains are likely to be encountered within the selected project area. However, in accordance with the National Historic Preservation Act (NHPA), should unanticipated historic or cultural materials be encountered during construction, all construction activities shall cease immediately within 100 feet of the remains until their cultural affiliation and ultimate disposition is determined in consultation with the West Virginia State Historic Preservation Officer (WV SHPO), local Indian tribes, and other interested parties.
6. A preliminary Phase I Site Assessment is required to determine if hazardous and toxic materials are present and to minimize the potential for discovery of regulated materials during construction. A proposed site may be abandoned where Phase I findings indicate adverse environmental conditions requiring expensive and time consuming mitigation. All hazardous materials shall be disposed of and handled in accordance with applicable local, State, and Federal regulations during implementation of the proposed project.
7. Construction vehicles and equipment shall be stored and maintained in good working order to minimize pollutant emissions and to minimize potential for spills of hazardous materials including fuels, coolants, lubricants and consequent soil and water contamination.
8. The siting and design of disaster relief housing will incorporate, where feasible, the cultural and social needs of the flood victims, and the existing communities into which they are placed.

7.0 PUBLIC NOTICE

A public notice regarding the availability of the Programmatic Environmental Assessment (PEA) was posted at the FEMA Disaster Recovery Centers (DRCs) throughout the counties where sites are being considered. This PEA and the proposed locations for temporary emergency disaster housing sites were made available for individuals to review from July 30, 2001 to August 2, 2001 at the following locations: FEMA Disaster Field Office, Environmental Liaison Office, Third Floor, 1700 MacCorkle Ave., SE, Charleston, WV. 25314, Phone 304-561-3046, Fax 304-561-3280, T.T.Y. 1-800-462-7585, and in the DRCs in the towns of Northfork, Welch, Mullens, Oceana, and Whitesville, West Virginia.

8.0 CONCLUSION

To provide temporary emergency disaster housing for people displaced by flooding in southern West Virginia, FEMA is proposing to construct temporary and transient emergency disaster housing on sites throughout the damaged areas. The plan is to design spaces for temporary and transient manufactured housing to be constructed in phases, as needed. The numbers of displaced people and applications for individual assistance emphasizes the critical need for emergency housing. The need for the proposed action is to provide a mechanism to ensure compliance with applicable Federal, State, and local environmental laws and regulations to support the timely and effective provision of temporary and transient emergency housing for disaster victims, while minimizing the potential for adverse environmental impacts.

A PEA was written to evaluate potential impacts to the environment by the most feasible alternative. Findings of this PEA indicate that a site-specific evaluation, using the RER addresses the requirements of NEPA, CAA, CWA, NHPA, ESA, EO 11988 (Floodplain Management), EO 11990 (Protection of Wetlands), EO 12898 (Environmental Justice, and various hazardous and toxic waste regulations. In addition, this PEA will ensure compliance with these identified Federal environmental laws, regulations, and EOs by reviewing and assessing each potential group housing site and documenting the results. Findings of this PEA indicate that an EIS is not required for this action.

9.0 AGENCIES CONSULTED

The following agencies were verbally consulted:

- U.S. Army Corps of Engineers – Huntington District
- Regional U.S. Fish and Wildlife Service
- West Virginia Department of Environmental Protection, Division of Culture and History
- West Virginia Department of Environmental Protection, Division of Waste Management
- West Virginia Department of Environmental Protection, Division of Air Quality
- West Virginia Department of Environmental Protection, Division of Water Resources
- West Virginia Division of Natural Resources, Non-game and Natural Heritage Program
- West Virginia Division of Natural Resource, Public Land Corporation
- West Virginia Bureau of Public Health

10.0 REFERENCES

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Appendix A
Federal Declaration for Disaster



**Federal Emergency Management Agency
West Virginia Office of Emergency Services**

Disaster Field Office
FEMA-1378-DR-WV
The Robinson Building
5088 West Washington Street, 1st Floor
Cross Lanes, WV 25313
(304) 769-2400




June 11, 2001

MEMORANDUM FOR: Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

THROUGH: Robert J. Adamcik
Deputy Associate Director

ATTENTION: Madge Dale
Team Leader, Documentation Branch

FROM: Charles M. Butler
Federal Coordinating Officer/
Disaster Recovery Manager 

SUBJECT: Closing of Incident Period
FEMA-1378-DR-WV

This is to advise you that after conferring with Stephen S. Kappa, the Governor's Authorized Representative, I have decided to close the Incident Period for FEMA-1378-DR-WV, effective June 11, 2001.

Thank you for your assistance in this matter. If you have any questions, please call me at (304) 769-2401.

THE WHITE HOUSE

WASHINGTON

June 3, 2001

The Honorable Joe M. Allbaugh
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear Director Allbaugh:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides beginning on May 15, 2001, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Sincerely,



Billing Code 6718-02P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1378-DR]

**West Virginia; Amendment No. 6 to Notice of a Major Disaster
Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA-1378-DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 10, 2001

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period for this disaster. The incident period for this declared disaster is now May 15, 2001, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

/S/

Joe M. Allbaugh,
Director.

Correction
↙**DECLARED 6/3/01**SUMMARY

In the event of a declaration, the following information applies:

STATE: West Virginia
NUMBER: FEMA-1378-DR
INCIDENT: Severe storms, flooding, and landslides
INCIDENT PERIOD: May 15, 2001, and continuing
DATE REQUESTED BY GOVERNOR: May 29, 2001
FEDERAL COORDINATING OFFICER: Charles M. Butler
National FCO Program

DESIGNATIONS AND TYPES OF ASSISTANCE:

INDIVIDUAL ASSISTANCE (Assistance to families and individuals):

Boone, Kanawha, Logan, Mercer, Raleigh, and Wyoming Counties.

PUBLIC ASSISTANCE (Assistance to State and local governments for the repair or replacement of disaster-damaged public facilities):

Boone, Clay, Lincoln, Logan, Mercer, Raleigh, Wayne, and Wyoming Counties.

HAZARD MITIGATION GRANT PROGRAM (Assistance to State and local governments for actions taken to prevent or reduce long term risk to life and property from natural or technological hazards):

All counties in the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

OTHER: Additional designations may be made at a later date after further evaluation.

Appendix B

Regulatory Guidance

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON D. C. 20006

January 19, 1979

MEMORANDUM FOR NEPA LIAISONS

SUBJECT: Agency Implementing Procedures Under CEQ's NEPA Regulations

Introduction

On November 29, 1978 the Council on Environmental Quality issued regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA regulations"). The regulations are binding on all Federal agencies and were developed through interagency and public consultation, review, and comment. The regulations appear at pages 55978-56007 of Volume 43 of the Federal Register.

Section 1507.3 of the NEPA regulations provides that each agency, shall adopt procedures implementing the NEPA regulations by July 30, 1979 ("agency implementing procedures").* The purpose of this memorandum is to provide Federal agencies with general guidance for developing these implementing procedures.**

* Implementing procedures for programs administered under Section 102(2)(D) of NEPA or under Section 104(h) of the Housing and Community Development Act of 1974 must also be adopted by July 30, 1979. However, Section 1506.12 provides that the procedures for these programs will not become effective until November 30, 1979 -- four months after the deadline for their adoption. This four month hiatus has been established to allow State and local agencies involved in these programs to adjust their decisionmaking to new implementing procedures.

On a separate point, Section 1506.12(a) also provides that any agency may proceed under these regulations at an earlier time. By this we mean that an agency may either adopt and place into effect implementing procedures before the July 30, 1979 deadline, if approved by the Council, or, for selected proposals, conduct its environmental reviews under the regulations before that time. Agencies administering programs under Section 102(2)(D) of NEPA or under Section 104(h) of the Housing and Community Development Act of 1974 may proceed under the regulations before November 30, 1979 with the consent of the State or local agencies involved.

** In developing this memorandum we have consulted with, circulated drafts to, and met with a number of the NEPA liaisons from agencies which prepare significant numbers of EISs. We appreciate their contribution.

Members of the Council's staff will be contacting you in the near future regarding a schedule for developing implementing procedures. We would like to become involved in your efforts early to avoid a last minute crunch later in the year. We have attached as Appendix A, a list of our staff members who will be available for consultation throughout the process.

Procedural Considerations

In developing implementing procedures under the NEPA regulations, agencies should bear in mind the following important considerations: First, the purpose of agency procedures is both to provide agency personnel with additional, more specific direction for implementing the procedural provisions of NEPA and to inform the public and State and local officials of how the NEPA regulations will be implemented in

agency decision making. Agency procedures should therefore provide Federal personnel with the direction they need to implement NEPA on a day-to-day basis. The procedure must also provide a clear and uncomplicated picture of what these outside the Federal government may do to become involved in the environmental review process under NEPA.

Second, the NEPA regulations provide that each agency shall as necessary adopt procedures to supplement the regulations (Section 1507.3). Major agency subunits are also encouraged (with the consent of the department) to adopt their own procedures. Departmental procedures would then address issues of general concern for all of its agencies; an individual agency's procedures would address the particulars of its own planning and decision making.

Third, agency implementing procedures are not required to, nor is it desirable that they address every section of the regulations. The sections that must be addressed are identified in Section 1507.3(b). This is detailed in the "NEPA Procedures Checklists" enclosed herewith. Agencies are encouraged to address other sections where this would further implementation of the NEPA regulations.

Fourth, while the format for implementing procedures is largely, a matter of agency discretion, the following points should be noted:

- (1) By Executive Order 11991, the President directed the Council to establish a single and definitive set of uniform standards for implementing NEPA government-wide. Therefore, while agencies may quote the regulations in their implementing procedures, they shall not attempt to restate or otherwise paraphrase the regulations (Section 1507.3(a)). Agencies shall confine themselves to procedures which make the standards established by the NEPA regulations effective in the context of their decision making.

- (2) Agencies may quote from the regulations to provide a context for implementing procedures. For example, an agency may quote from Section 1508.9 on environmental assessments as a means of introducing its own environmental assessment procedures. In addition, agencies may produce a single, self-contained document containing quotations from the NEPA regulations so that agency personnel need not refer back and forth from NEPA regulations to implementing procedures in conducting environmental reviews. However, whenever the NEPA regulations are quoted they must be quoted verbatim, properly cited, and set off in some fashion (e.g., italics, bold faced type) so that the reader can readily distinguish between the NEPA regulations and agency implementing procedures.

You will understand the competing considerations that guide us here. On the one hand we intend the agency procedures to be the minimum length possible consistent with the regulations and this memorandum. On the other hand, we do not want to place readers in the position of having constantly to refer to other documents.

- (3) Implementing procedures should cross-reference relevant sections of the regulations where they are not quoted in full. It is important to link agency procedures with corresponding sections in the NEPA regulations so that agency personnel will have a complete picture of the standards which govern the environmental review process.

- (4) Agency implementing procedures should where practicable follow the same sequence of procedural steps appearing in the NEPA regulations. It will be easier to work with both documents if the procedures and the regulations take a parallel approach.

Fifth, there is no need to include every detail of agency decisionmaking in the implementing procedures. The NEPA regulations contemplate the publication of further explanatory guidance with specific information that may not be appropriate for agency implementing procedures (Section 1507.3(a)). This further guidance, which may be in the form of an operating manual, administrative directives, explanatory bulletins, and other publications, must also be reviewed by the Council and made available to the public.

Sixth, agencies with similar programs should consult with each other and the Council to coordinate their implementing procedures, especially for programs requesting similar information from applicants (Section 1507.3(a)). Opportunities exist to improve the environmental review process through a consistent approach to similar Federal programs. It is important that agencies combine efforts in developing this approach and ensure that, once developed, it is uniformly adopted in agency implementing procedures. We have attached as Appendix B a list of NEPA liaisons for all agencies who should be contacted for this purpose.

Finally, in developing implementing procedures, agencies must allow time for review by the Council and the public. Section 1507.3(a) of the NEPA regulations establishes a three-step process leading to adoption of final procedures by July 30, 1979: Agencies shall consult with the Council in developing proposed implementing procedures. Agencies shall then publish their proposed procedures in the Federal Register for public review and comment. As the last step, and following changes made in response to comments received during the review period, agencies shall submit the final version of their proposed procedures for review by the Council for conformity with the Act and the NEPA regulations. The Council will complete its review within 30 days. The Council may thereafter make public the results of its reviews.

To ensure that this process is concluded by July 30, 1979, the Council recommends that agencies publish their proposed procedures in the Federal Register for comment no later than April 1, 1979 and submit by June 1, 1979 the final version of the procedures to the Council for review. Please note that the regulations go into effect and are binding through out the government on July 30, 1979, regardless of whether an individual agency has adopted its procedures.

Once in effect, agency implementing procedures shall be filed with the Council, published in the Federal Register and made readily available to the public. Please note that Section 1507.3(a) of the regulations requires agencies continuously to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

Guidance for Developing Agency Implementing Procedures

We have enclosed with this memorandum a copy of the "NEPA Procedures Checklist" which the Council will use in evaluating agency implementing procedures. Many sections of the regulations will need no elaboration by agencies. Those sections of the regulations which must be addressed in agency procedures are marked with asterisks. Other sections described in the checklist or appearing in the regulations may be addressed, at the option of an agency, to further provide for implementation of the NEPA regulations in the agency's environmental review process.

The test for evaluating agency procedures is whether they provide the means to incorporate the standards of the regulations into agency planning and decision-making. The question we will ask, in other words, is whether the procedures will give practical effect to the provisions of the regulations in the agencies environmental review process.

In what follows, we elaborate several aspects of our guidance for developing agency implementing procedures.

A. CARRYING OUT NATIONAL ENVIRONMENTAL POLICY AND GOALS

Section 1500.1(a) of the NEPA regulations states that

The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains 'action forcing' provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101."

In addition, Section 1500.1(c) states that

"Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork -- even excellent paperwork -- but to foster excellent Action...."

These statements of purpose place the procedural requirements of NEPA in the context of national environmental policies and goals and establish guiding principles for the development of agency implementing procedures.

B. ASSURING THAT THE NEPA PROCESS CORRESPONDS WITH MAJOR DECISION POINTS FOR PRINCIPAL AGENCY PROGRAMS

The NEPA regulations are designed to ensure that the data and analysis developed during the environmental reviews process is made available to agency planners and decision-makers at the time when it will be of most value to them in formulating, reviewing and deciding upon proposals for agency action. Section 1501.2 provides, for example, that "[a]gencies shall integrate the NEPA process with other

planning at the earliest possible time to insure that planning and decisions reflect Environmental values" Section 1501.2(b) states that "[e]nvironmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents."

In addition, Section 1502.5 provides that an "agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal" so that the statement "can serve practically as an important contribution to the decision-making process...." In the case of Federal projects, the EIS shall be prepared at the "feasibility analysis (go-no go) stage" (Section 1502.5(a)). For projects initiated elsewhere the process shall commence "no later than immediately after the application is received" (Section 1502.5(b)). Agencies are encouraged in such cases to initiate their analyses even earlier.

Moreover, Section 1505.1(d) directs agencies to adopt implementing procedures requiring that relevant environmental documents, comments and responses "accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions." Agency implementing procedures must also ensure that "the alternatives considered by the decision-maker are encompassed by the range of alternatives" discussed in these environmental materials (Section 1505.1(e)).

Agency implementing procedures must serve as the vehicle for ensuring that these critical issues of timing and integration are properly established in agency planning and decision-making processes. It is for this reason that Section 1505.1(b) provides that agency implementing procedures shall include "[d]esignating the major decision points for the agency's principal programs likely to have a significant effect on the human environment assuring that the NEPA process corresponds with them."

In order to conform with this section, an agency's procedures should include such information as a

description of when the NEPA process starts, i.e. "the earliest possible time;" a designation of major decision points; an identification of the official making the major decisions; a description of what is decided at each major decision point; and a description of the environmental data and analysis that are to be made available to the decision-maker at each major decision point.

Charts and other graphic aids may be useful in presenting this material.

C. IDENTIFYING TYPICAL CLASSES OF ACTION FOR SIMILAR TREATMENT IN THE NEPA PROCESS

Section 1507.3(c)(2) of the NEPA regulations provides that agency Implementing procedures shall include:

"(2) Specific criteria for and identification of those typical classes of action:

- (i) Which normally do require environmental impact statements.
- (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).
- (iii) Which normally require environmental assessments but not necessarily environmental impact statements."

Section 1501.4 describes the way in which these categories are to be used in determining whether to prepare an environmental impact statement.

Section 1508.4 defines "categorical exclusion" to mean "a category of actions which do not individually or cumulatively have a significant effect on the human environment..." (the category described in 1507.3(b)(2) (ii) above). Section 1508.4 also states, however, that agency implementing procedures "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." When these extraordinary circumstances occur, the action or actions would not be treated as categorically excluded from the NEPA process.

Three things should be noted about this aspect of agency implementing procedures. First, Section 1508.18 of the regulations states that

"(b) Federal actions tend to fall within one of the following categories:

"(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agencies policies which will result in or substantially alter agency programs.

"(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

"(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency-resources to implement a specific statutory program or executive directive.

"(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory

decision as well as federal and federally assisted activities."

Agencies should review this list of actions for purposes of establishing typical classes of action under Section 1507.3(b)(2).

Second, it is not sufficient simply to identify and categorize typical classes of agency actions under Section 1507.3(b)(2) of the regulations. Agency implementing procedures must also contain the "specific criteria" used for this purpose.

Third, categorical exclusions must be explicitly qualified as required by Section 1508.4. For each such exclusion, agency implementing procedures must describe at least in general terms "the extraordinary circumstances in which a normally excluded action may have a significant environmental effect" and include a description of the procedures which would be followed by the agency in recognizing such an exception.

D. INTEGRATING NEPA REQUIREMENTS WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS

One important purpose of the regulations is "[i]ntegrating NEPA requires meets with other environmental review and consultation requirements" (Sections 1500.4(k), 1500.5(g)). Section 1502.25(a) provides, for example, that:

"To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders."

To this end, Section 1501.7(a)(6) requires that as part of the scoping process agencies identify other environmental review and consultation requirements so that other required analyses and studies may be prepared concurrently with, and integrated with, the environmental impact statement (see Sections 1502.25(b), 1503.3(c), (d)).

We have attached as Appendix C list of the major environmental review and consultation requirements for Federal agencies. Agency implementing procedures should identify those requirements that apply to agency actions, and the analyses, surveys and studies which they entail. The implementing procedures should also describe the process by which these requirements are met and indicate how this process will be made to run concurrently with, and integrated with, the NEPA process in terms of timing, agency personnel involved, public review and comment, publication and use of documents, research and analysis, and so forth. However, agencies should not allow the incorporation of these other more narrowly focused environmental review and consultation requirements to detract from the comprehensive approach required by NEPA.

E. FACILITATING ENVIRONMENTAL REVIEWS FOR PRIVATE APPLICANTS

Section 1501.2(d) of the NEPA regulations states that each agency shall:

"(d) Provide for cases where actions are planned by private applicants or other non-Federal

entities before Federal involvement so that:

"(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

"(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable."

Section 1507.3(b)(1) states that agency implementing procedures shall include the procedures required by Section 1501.2(d).

To fulfill these requirements, agency implementing procedures should accomplish the following:\

(a) Identify types of actions initiated by private parties, State and local agencies and other non-governmental entities for which agency involvement is reasonably foreseeable;

(b) Establish policies for advising potential applicants of studies or other information foreseeably required for later Federal action including the NEPA process. Such policies should provide for full public notice that agency advice on such matters is available, publications containing that advice such as a handbook for applicants, and early consultation in cases where agency involvement is reasonably foreseeable;

(c) Designate agency personnel responsible for making the identifications and implementing the policies under subsections (a) and (b), above.

F. MITIGATION AND MONITORING

Section 1505.3 of the NEPA regulations states that

"Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Section 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

- a. "Include appropriate conditions in grants, permits or other approvals.
- b. Condition funding of actions on mitigation.
- c. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.
- d. Upon request, make available to the public the results of relevant monitoring."

Agencies are encouraged to address these requirements in their implementing procedures.

G. OTHER MATTERS

1. Making Environmental Documents a Part of the Record in Administrative Proceedings

Section 1505.1(c) provides that agencies shall adopt procedures which require "that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings." In addition, Section 1502.9(c)(3) of the NEPA regulations provides that agencies "[s]hall adopt procedures for introducing a supplement [to an environmental impact statement] into its formal administrative record, if such a record exists. Agency procedures must include provisions for implementing these requirements of the NEPA regulations. Section 1507.3(b)(1).

- Informing the Public on the Status of the NEPA Process

Section 1506.6(e) of the NEPA regulations provides that agency implementing procedures shall indicate "where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process." See Section 1507.3(b)(1). Similarly, Section 1507.2(a) provides that "[a]gencies shall designate a person to be responsible for overall review of agency NEPA compliance."

- Identifying Agencies With Special Expertise and Jurisdiction By Law

Some agencies have already made arrangements among themselves for cooperation in the environmental review process. Agency implementing procedures should describe the arrangements which exist, identify letters of agreement, memoranda of understanding and other written documents reflecting the arrangements, and indicate how these documents may be obtained by members of the public.

The Council is currently preparing a list of agencies with special expertise in prescribed resource areas and an analysis of agency jurisdiction by law under Federal statutes. When published, this information will assist lead agencies in identifying potential cooperating agencies for preparing environmental impact statements.

- Cooperating With State and Local Agencies

Section 1506.2 of the NEPA regulations provides for cooperation with State and local agencies to reduce duplication between NEPA and State and local requirements. To this end, we have attached as Appendix D a list of State and local entities with environmental review requirements that appeared in the Council's 1977 Annual Report on Environmental Quality.

We recognize that developing agency implementing procedures will be a challenging job. We will be available for consultation throughout this process and are prepared to meet with you to discuss the implementing procedures at the earliest mutually convenient time.



NICHOLAS C. YOST
General Counsel

NEPA PROCEDURE CHECKLIST

CEQ Regulations

This Checklist will serve as a basis for evaluating agency implementing procedures. Many sections of the regulations need no explanation by agencies. Those sections of the regulations which must be addressed in agency procedures are marked with asterisks. Other sections described in the Checklist or appearing in the regulations may be addressed, at the option of an agency, to further provide for implementation of the NEPA regulations in the agency's environmental review process. The sections below are ones which either must be addressed in implementing procedures or which the Council believes are especially pertinent to the procedures.

PART 1500 -- PURPOSE, POLICY, AND MANDATE

Part 1500 establishes the purpose, policy and mandate for the NEPA regulations. Agency implementing procedures must be evaluated in this light. The following sections provide a general basis for this evaluation. We intend not that these requirements be repeated in the agency procedures, but that the procedures be written in light of these purposes, policies and mandates.

SECTION 1500.1 PURPOSE

Section 1500.1(a) states that

"The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains 'action-forcing' provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101."

This and other statements of purpose in Section 1500.1 place the procedural requirements of NEPA in the context of national environmental policies and goals and establish guiding principles for the development of agency implementing procedures.

SECTION 1500.4 REDUCING PAPERWORK

Agencies shall reduce excessive paperwork by.

- (a) Reducing the length of EISs (Section 1502.2(c)) by means such as page limits (Sections 1501.7(b)(1) and 1502.7).
- (b) Preparing analytic rather than encyclopedic EISs (Section 1502.2(a)).
- (c) Discussing only briefly issues other than significant ones (Section 1502.2(b)).
- (d) Writing EISs in plain language (Section 1502.8).

- (e) Following a clear format for EISs (Section 1502.10).
- (f) Emphasizing the portions of the EIS that are useful (Sections 1502.14 and 1502.15) and reducing emphasis on background material (Section 1502.16).
- (g) Using the scoping process to identify significant issues, deemphasize insignificant issues, and to narrow the scope of the EIS process (Section 1501.7).
- (h) Summarizing the EIS (Section 1502.12) and circulating the summary if the EIS is unusually long (Section 1502.19).
- (i) Using program, policy, or plan EISs and tiering to eliminate repetition (Sections 1502.4 and 1502.20).
- (j) Incorporating by reference (Section 1502.21).
- (k) Integrating NEPA requirements with other environmental review and consultation requirements (Section 1502.25).
- (l) Requiring comments to be specific (Section 1503.3).
- (m) Attaching and circulating only changes to the draft EIS rather than the entire statement when changes are minor (Section 1503.4(c)).
- (n) Eliminating duplication with State and local procedures, by providing for joint preparation (Section 1506.2), and with other Federal procedures, by providing for adoption of EISs (Section 1506.3).
- (o) Combining environmental documents with other documents (Section 1506.4).
- (p) Using categorical exclusions (Section 1508.4).
- (q) Using findings of no significant impact (Section 1508.13).

SECTION 1500.5 REDUCING DELAY

Agencies shall reduce delay by:

- (a) Integrating the NEPA process into early planning (Section 1501.2).
- (b) Emphasizing interagency cooperation before the EIS is prepared (Section 1501.6).
- (c) Insuring rapid resolution of lead agency disputes (Section 1501.5).
- (d) Using the scoping process for early identification of the real issues (Section 1501.7).

- (e) Establishing appropriate time limits (Sections 1501.7(b)(2) and 1501.8).
- (f) Preparing EISs early in the process (Section 1502.5).
- (g) Integrating NEPA requirements with other environmental review and consultation requirements (Section 1502.25).
- (h) Eliminating duplication with State and local procedures by providing for joint preparation (Section 1506.2) and with other Federal procedures by providing for adoption of EISs (Section 1506.3).
- (i) Combining environmental documents with other documents (Section 1506.4).
- (j) Using accelerated procedures for proposals for legislation (Section 1506.8).
- (k) Using categorical exclusions (Section 1508.4).
- (l) Using findings of no significant impact (Section 1508.13).

SECTION 1500.6 AGENCY AUTHORITY

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives.

Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act.

PART 1501 -- NEPA AND AGENCY PLANNING

SECTION 1501.2 APPLY NEPA EARLY IN THE PROCESS

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

*** (d) Provide for cases where actions are planned by private applicants

or other non-Federal entities before Federal involvement so that:

- (1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
- (2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
- (3) The Federal agency commences its NEPA process at the earliest possible time.

[Note. To fulfill these requirements, agency implementing procedures must accomplish the following:

- (a) Identify types of actions initiated by private parties, State and local agencies and other non-governmental entities for which agency involvement is reasonably foreseeable;
- (b) Establish policies for advising potential applicants of studies or other information foreseeably required for later Federal action including the NEPA process. Such policies should provide for full public notice that agency advice on such matters is available, detailed written publications containing that advice, and early consultation in cases where agency involvement is reasonably foreseeable: and
- (c) Designate agency personnel responsible for making the identifications and implementing the policies under subsections (a) and (b), above.]

SECTION 1501.3 WHEN TO PREPARE AN ENVIRONMENTAL ASSESSMENT

- (a) Agencies shall prepare an environmental assessment (Section. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Section 1507.3.

SECTION 1501.4 WHETHER TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

In determining whether to prepare an environmental impact statement the Federal agency shall:

- *** (a) Determine under its procedures supplementing these regulations (described in Section 1507.3) whether the proposal is one which:
- (1) Normally requires an environmental impact statement, or
 - (2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

* * * *

(e) Prepare a finding of no significant impact (Section 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in Section 1506.6.

(2) In certain limited circumstances which the agency may cover in its procedures under Section 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Section 1507.3, or

(ii) The nature of the proposed action is one without precedent.

SECTION 1501.5 LEAD AGENCIES

Subsection (d) provides for written requests to potential lead agencies for a lead agency designation. Subsection (e) provides that when a request for lead agency designation is filed with the Council, a copy of that request shall be transmitted to each potential lead agency. Agency procedures should identify the person or office where such requests should be mailed.

SECTION 1501.6 COOPERATING AGENCIES

Each cooperating agency shall make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability (Section 1501.6(b)(4)).

[Note: Some agencies have already made arrangements among themselves for cooperation in the environmental review process. Agency implementing procedures should describe the arrangements which exist, identify letters of agreement, memoranda of understanding and other written documents reflecting the arrangements, and indicate how these documents may be obtained by members of the public.]

SECTION 1501.7 SCOPING

(a) As part of the scoping process the lead agency shall:

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and

studies concurrently with, and integrated with, the environmental impact statement as provided in Section 1502.25.

(b) As part of the scoping process the lead agency may;

(3) Adopt procedures under Section 1507.3 to combine its environmental assessment process with its scoping process.

SECTION 1502.4 MAJOR FEDERAL ACTIONS REQUIRING THE PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Subsection (a) of Section 1502.4 states that "[p]roposals or parts of proposals which are related to each other closely enough to be in effect, a single course of action shall be evaluated in a single impact statement." Subsection (b) further states that "[e]nvironmental impact statements may be prepared, and are sometimes required, for broad Federal actions ..., (Section 1508.18)". Subsection (c) sets forth several ways in which proposals may be evaluated when preparing EISs on broad actions.

Agency implementing procedures should identify categories of broad agency actions for which a single EIS will be prepared as provided in this sections.

SECTION 1502.5 TIMING.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Section 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made (Sections 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal-agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

SECTION 1502.6 INTERDISCIPLINARY PREPARATION.

The disciplines of EIS preparers shall be appropriate to the scope and issues identified in the scoping process (Section 1501.7). (See Section 1502.17.)

SECTION 1502.9 DRAFT, FINAL, AND SUPPLEMENTAL STATEMENTS.

*** This section states that agencies shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists (Subsection (c)(3)).

SECTION 1502.20 TIERING

Section 1502.20 describes the concept of tiering in the following terms:

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

Section 1508.28 describes the circumstances in which tiering is appropriate.

Agency implementing procedures should identify categories of agency actions for which tiering will be employed.

SECTION 1502.23 COST-BENEFIT ANALYSIS

An environmental impact statement should indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

SECTION 1502.25 ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 V.S.C. Sec. 661 et seq.) the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

[Note: Refer to Appendix C of the Memorandum For NEPA Liaisons for a list of the major environmental review and consultation requirements. Agency implementing procedures should identify those requirements that apply to agency actions, and the analyses, surveys and studies which they entail. The implementing procedures should also describe the process by which these requirements are met and indicate how this process will be made to run concurrently with, and integrated with, the NEPA process in terms of timing, agency personnel involved, public review and comment, publication and use of documents, research and analysis, and so forth. However, agencies should not allow the incorporation of these other more narrowly focused environmental review and consultation requirements to detract from the comprehensive approach required by NEPA.]

PART 1505 -- NEPA AND AGENCY DECISIONMAKING

SECTION 1505.1 AGENCY DECISIONMAKING PROCEDURES

*** Agencies shall adopt procedures (Section 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not

be limited to:

*** (a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

*** (b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

[Note: The NEPA regulations are designed to ensure that the data and analysis developed during the environmental review process is made available to agency planners and decisionmakers at the time when it will be of most value to them in formulating, reviewing and deciding upon proposals for major Federal action. See e.g. Sections 1501.2(b); 1502.5(a), (b); 1505.1(d), (e).

Agency implementing procedures must serve as the vehicle for ensuring that critical issues of timing and integration are properly established in agency planning and decisionmaking. It is for this reason that Section 1505.1(b) provides that agency implementing procedures shall include "[d]esignating the major decision points for the agency's principal programs likely to have a significant effect on the human environment assuring that the NEPA process corresponds with them."

In order to conform with this section, an agency's procedures should include such information as a description of when the NEPA process starts, i.e "the earliest possible time;" a designation of major decision points; an identification of the official making the major decisions; a description of what is decided at each major decision point; and a description of the environmental data and analysis that are to be made available to the decisionmaker at each major decision point.]

Charts and other graphic aids may be useful in presenting this material.

*** (c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

*** (d) Requiring that relevant environmental documents comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

*** (e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statements. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

SECTION 1505.2 RECORD OF DECISION IN CASES REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

Section 1505.2 requires agencies to prepare a concise public record of decision. The record shall, among other things, state what the decision was, identify all alternatives considered,

and state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. Agencies are encouraged to address the requirement for a record of decision in their implementing procedures.

SECTION 1505.3 IMPLEMENTING THE DECISION

Section 1505.3 of the NEPA regulations states that

"Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

"(a) Include appropriate conditions in grants, permits or other approvals.

"(b) Condition funding of actions on mitigation.

"(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

"(d) Upon request, make available to the public the results of relevant monitoring."

Agencies are encouraged to address these requirements in their implementing procedures.

PART 1506 -- OTHER REQUIREMENTS OF NEPA

SECTION 1506.2 ELIMINATION OF DUPLICATION WITH STATE AND LOCAL PROCEDURES

Subsection (b) of Section 1506.2 mandates Federal agency cooperation with State and local agencies to the "fullest extent possible" and describes several forms which this cooperation could take. Agency implementing procedures should identify categories of Federal action where such cooperation is possible and describe the steps which will be taken to cooperate with State and local agencies in such cases.

Subsection (c) mandates cooperation to reduce duplication between NEPA and comparable State and local requirements. This cooperation shall include, to the fullest extent possible, joint EISs. Agency implementing procedures should describe how the requirements of this subsection will be met when the State and local requirements for a proposal are comparable to NEPA.

SECTION 1506.4 COMBINING DOCUMENTS

This section states that any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork. Agencies should describe the circumstances in which this will be done.

SECTION 1506.5 AGENCY RESPONSIBILITY

(a) Information

Agencies must assist applicants by outlining the types of information required of them. Agencies shall independently evaluate the information submitted by the applicant and include the names of persons responsible for the evaluation in the list of preparers (Section 1502.17).

(b) Environmental assessments

Agencies are required to make their own evaluation of issues and take responsibility for the scope and content of environmental assessments prepared by applicants.

(c) Environmental impact statements

Contractors shall be chosen solely by Federal agencies to avoid any conflict of interest.

Agencies shall prepare disclosure statements for execution by contractors specifying that the contractor has no financial or other interest in the outcome of the project.

The responsible Federal official shall independently evaluate the EIS and take responsibility for its scope and contents.

SECTION 1506.6 PUBLIC INVOLVEMENT

This section provides that agencies shall

- make diligent efforts to involve the public in preparing and implementing their NEPA procedures (subsection (a));

- provide public notice of NEPA related hearings and other elements of the NEPA process in prescribed ways (subsection (b));

- hold public meetings in accordance with statutory requirements and prescribed criteria (subsection (c));

- solicit appropriate information from the public (subsection (d));

- *** -- explain in its procedures where interested persons can get information on status reports on EISs and other elements of the NEPA process (subsection (e)); and;

- make EISs and related documents available to the public under prescribed standards and without charge, to the extent practicable (subsection (f)).

[Notes: Section 1506.6 is the principal section on public involvement in the NEPA process.

It is imperative that it be scrupulously followed in agency implementing procedures.]

SECTION 1506.12 EFFECTIVE DATE

Subsection (a) of this section provides that

- the regulations shall apply to the fullest extent practicable to on-going activities and environmental documents begun before the effective date;
- the regulations do not apply to an EIS or supplement which was filed in draft form before the effective date of the regulations, i.e. July 30, 1979;
- the Council's guidelines shall remain in effect until the regulations take effect.

PART 1507 -- AGENCY COMPLIANCE

SECTION 1507.1 AGENCY COMPLIANCE

It is the intent of the regulations to allow each agency flexibility in adapting its implementing procedures to the requirements of other applicable laws.

SECTION 1507.2 AGENCY CAPABILITY TO COMPLY

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment.

-- Agencies shall designate 2 person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Section 102 (2) (B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate EISs pursuant to Section 102(2)(C).

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources regardless of whether an EIS is required for the proposal (Section 102(2)(E)).

(e) Comply with the requirements of Section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of Sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Section 2.

SECTION 1507.3 AGENCY PROCEDURES

Subsection (a) provides that

- agencies shall adopt their Implementing procedures by July 30, 1979;
- agencies shall not paraphrase the regulations;
- agencies with similar programs should coordinate their procedures;
- agencies shall adopt procedures only after review by the Council for conformity with the Act and the regulations;
- agencies shall continue to review and where necessary to review their policies and procedures in order to ensure compliance with the Act;

Section (b) provides that

*** -- agency procedures shall include procedures required by Sections 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e) and 1508.4 of the regulations;

*** -- agency procedures shall include "specific criteria" for and identification of those typical classes of actions which

- (i) normally do require EISs;
- (ii) normally do not require either an environmental assessment or an EIS, i.e. categorical exclusions as defined in section 1508.4;
- (iii) normally require an assessment but not necessarily an EIS.

[NOTE: Section 1508.18(b) of the regulations states that Federal actions tend to fall within one of four categories -- policies, plans, programs, and projects -- and gives examples of each. Agencies should use these categories in identifying typical classes of actions under this section.

[In addition, in developing specific criteria and identifying typical classes of action for similar treatment under Section 102(2)(C) of NEPA, agencies will be required to determine whether those actions may "significantly" affect the quality of the human environment. Section 1508.27 defines the term "significantly" and agencies must follow this definition.

[Moreover, Section 1508.25 of the regulations defines the term scope as consisting of "the range of actions, alternatives, and impacts to be considered in an environmental impact statement," and sets forth the factors which must be weighed in determining the scope of an EIS. For classes of action which normally require an EIS, agencies are encouraged to discuss the scope of the EIS that will be prepared.

[Finally, categorical exclusions must be explicitly qualified as required by Section 1508.4

For each such exclusion, agency implementing procedures must describe at least in general terms "the extraordinary circumstances in which a normally excluded action may have a significant environmental effect" and include a description of the procedures which would be followed by the agency in recognizing such an exception.]

(c) Agency procedures may include specific criteria for providing limited exemptions for classified proposals, as prescribed.

(d) Agency procedures may provide for periods of time other than those presented in Section 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Section 1501.7 may be published at a reasonable time in advance of preparation of the draft EIS.

APPENDIX C

Environmental Review and Consultation Requirements

This Appendix lists the principal environmental review and consultation requirements and types of requirements which may be applicable to agency activities. A few of these requirements (e.g., Section 106 of the National Historic Preservation Act of 1966, Section 7 of the Endangered Species Act, and Executive Orders 11988, 11990) apply to all federal agency activities. Most review and consultation requirements apply to only a few federal agencies or to only a defined range of activities. Agencies should carefully analyze their activities to identify which environmental review and consultation requirements are applicable.

In implementing Section 1502.25 of the NEPA regulations agencies in their procedures should show both: 1) how documents required to be prepared for applicable environmental review and consultation requirement are to be integrated (or prepared concurrently) with NEPA documents, and 2) how the applicable consultation or commenting process is to be undertaken concurrently with circulation of the EIS. In general, compliance with NEPA is not per se compliance with applicable environmental review and consultation requirements. But compliance with both NEPA and applicable environmental review and consultation requirements can be greatly simplified by showing how the two fit together.

1. Cultural Resources Protection

Archeological and Historic Preservation Act of 1974
16 U.S.C. §469a-1

National Historic Preservation Act of 1966 (Sec. 106)
16 U.S.C. § 470f

Antiquities Act of 1906
16 U.S.C. § 431

Executive Order 11593

2. Water Quality, Water Resources, Floodplains, Wetlands, Coastal Zone

Marine Protection, Research and Sanctuaries Act of 1972
(Sections 102, 103, 301.)
16 U.S.C. § 1431 et seq.

Safe Drinking Water Act of 1974
42 U.S.C. § 300f

Flood Disaster Protection Act of 1973
12 U.S.C. § 24, 1701-1 Supp
42 U.S.C. § 4001 et seq.

Coastal Zone Management Act of 1972
16 U.S.C. § 1451, 1456

Estuary Protection Act
16 U.S.C. § 1221

Executive Order 11988 (Floodplain Management)

Executive Order 11990 (Wetlands)

Federal Water Project Recreation Act (§ 6(a))
16 U.S.C. § 4601-17

Clean Water Act (§§ 208, 303, 401, 402, 404, 405, 511)
33 U.S.C. §§ 1288, 1314, 1341, 1342, 1344

River and Harbor Act of 1899 (§ 9 and § 10)
33 U.S.C. § 401 et seq.

Wild and Scenic Rivers Act of 1968 (Section 7)
16 U.S.C. §1274 et seq.

Federal Power Act
16 U.S.C. § 797

Water Resources Planning Act of 1965
42 U.S.C. § 1962 et seq.

(Water Resources Council's Principles and Standards)

3. Wildlife

Endangered Species Act (Section 7)
16 U.S.C. § 1531 et seq.

Fish and Wildlife Coordination Act
16 U.S.C. § 661, 662

Fish and Wildlife Conservation at Small Watershed Projects
16 U.S.C. § 1001, 1005(4), 1008

4. Public Lands, Open Space, Recreation

- Environmental Review and Consultation Requirements for granting easements, rights of way and use permits on public lands, Indian reservation lands, parks, wilderness areas, etc. Statutes involved include:

Federal Land Policy and Management Act
43 U.S.C. § 1701, 1761-1771

Mineral Leasing Act Amendments of 1973
30 U.S.C. § 185

Environmental Review and Consultation Requirements for using special purpose lands for non-related purposes. These requirements are found in a number of statutes such as:

Land and Water Conservation Fund Act of 1965 (Section 6(f))
16 U.S.C. § 4601-8(f)

Open Space Lands
42 U.S.C. § 1500a(d)

Forest and Rangeland Renewable Resources Act
16 U.S.C. § 1601 et seq.

5 Oceanography

Deepwater Port Act
33 U.S.C. § 1501, 1503-1505

Ocean Dumping
33 U.S.C. § 1401, 1412, 1413, 1414

Marine Protection, Research and Sanctuaries Act
6 U.S.C. § 1431-1434

6. Transportation

Department of Transportation Act of 1966 (Section 4(f))

49 U.S.C. §1653(f)

Federal Aid Highway Act of 1958
23 U.S.C. §128, 138

Urban Mass Transportation Act of 1964
49 U.S.C. § 1602, 1610

Airport and Airway Development Act of 1970
49 U.S.C. § 1716

Federal Aviation Act
49 U.S.C. § 3334

7. Air Quality

Clean Air Act
42 U.S.C. § 7401 et seq.

8. Miscellaneous

Intergovernmental Coordination Act of 1968
42 U.S.C. § 4201, 4231, 4233
(A-95 review process, including urban impact analysis)

Demonstration Cities and Metropolitan Development Act of 1966
42 U.S.C. § 3334

STATE ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS, MAY 1, 1977

States with Comprehensive Statutory Requirements

CALIFORNIA

Source: California Environmental Quality Act of 1970, Cal. Pub. Res. Code, Section 21000-21176 (Supp. 1972), *as amended* by: Ch. 1154, Statutes of 1972, December 5, 1972; Ch. 895, Statutes of 1973, September 28, 1973; Ch. 56, Statutes of 1974, March 4, 1974; Ch. 276, Statutes of 1974, May 21, 1974; Ch. 1187, Statutes of 1975, September 30, 1975; Ch. 593, Statutes of 1976, August 27, 1976; Ch. 753, Statutes of 1976, September 7, 1976; Ch. 1312, Statutes of 1976, September 29, 1976.

Guidelines: California Administrative Code, Title 14, Division 6, Ch. 3 (Sections 15000 through 15192) and appendices adopted February 3, 1973, *as amended* December 14, 1973, January 18, 1974, March 26, 1974, December 30, 1974, January 30, 1975, February 18, 1975, January 6, 1976, October 8, 1976, December 8, 1976, December 23, 1976. Guidelines are prepared by the Resources Agency of California.

State Contact: Norman E. Hill, Assistant to the Secretary for Resources, The Resources Agency, 1414 Ninth Street, Sacramento, California 95815 (Phone: 916-445-9134).

CONNECTICUT

Source: Connecticut Environmental Policy Act of 1973 Pub. Act 73-562 (approved June 22, 1973), Conn. Gen. Stat. Ann Ch. 439, Section 22a-1 *et seq.* (Cum. Supp. 1974-1975), effective February 1, 1975.

Guidelines: None.

State Contact: Gregory Sharp, Director, Information and Education, Department of Environmental Protection, State Office Building, Room 114, Hartford, Connecticut 06115 (Phone: 203-566-3489).

HAWAII

Source: Governor's Executive Order of August 21, 1974, as supplemented by Act 246, Sess. Laws of Hawaii (approved June 4, 1974), Hawaii Rev. Stat. Ch. 343 (1974).

Guidelines: "Rules and Regulations Pertaining to Chapter 343," promulgated in September 1975 by the Hawaii Environmental Quality Commission.

State Contact: Richard E. Maryland, Director, Office of Environmental Quality Control, Office of the Governor, 550 Halekauwila Street, Room 301, Honolulu, Hawaii 96813 (Phone: 808-548 - 6915).

INDIANA

Source: IC 1971, 13-1-10-3, *added* by Pub. L. 98, 1972, Ind. Stat. Ann. Section 1-301 (c) (effective July 1, 1975).

Guidelines: EMB-2; "The Definition of Actions of State Agencies Which Have a Significant Environmental Impact," effective August 7, 1975.

State Contact: Ralph Pickard, Technical Secretary, Environmental Management Board, 1330 W. Michigan Street, Indianapolis, Indiana 46206 (Phone: 317-633-4420).

MARYLAND

Source: Maryland Environmental Policy Act of 1973, Ch. 702, Md. Acts of 1973, 41 Ann. Code of Md., Section 447-451 (Cum. Supp. 1973), and Ch. 703, Md Acts of 1973 Natural Res. Art, Ann. Code of Md., Section 1-301 *et seq.* (1974 Volume) *as amended* by Ch. 129 of the Md. Acts of 1975.

Guidelines: "Revised Guidelines for Implementation of the Maryland Environmental Policy Act," issued by the Secretary of the Department of Natural Resources, June 15, 1974.

State Contact: Joseph Knapp, Administrator, Clearing House Review, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 (Phone: 301-269-3548).

MASSACHUSETTS

Source: Ch. 781, Acts of 1972, Ann. Laws Mass. Ch. 30, Section 61-62 (Cum. Supp. 1973), *as amended* by Ch. 257 of the Acts of 1974.

Guidelines: "Regulations to Create a Uniform System for the Preparation of Environmental Impact Reports," July 6, 1973, *as amended* October 15, 1973, January 8, 1975. Guidelines are prepared by the Executive Office of Environmental Affairs.

State Contact: William Hicks, Director, MEPA Programs, Executive Office of Environmental Affairs, 100 Cambridge Street, Room 2000, Boston, Massachusetts 02202 (Phone: 617-727-7700).

MINNESOTA

Source: Minnesota Environmental Policy Act of 1973, Ch. 412, Laws of 1973, Minn. Stat. Ann. Ch. 116D (Cum. Supp. 1974).

Guidelines: "Rules and Regulations for Environmental Impact Statements," issued by the Minnesota Environmental Quality Council on April 4, 1974, *as amended* February 13, 1977.

State Contact: Joe Sizer, Director, Environmental Planning, Environmental Quality Council, Capital Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 (Phone: 612-296-2712).

MONTANA

Source: Montana Environmental Policy Act of 1971 Ch. 238; L. 1971, Rev. Code Mont., Section 69 - 6501 *et seq.* (Cum. Supp. 1973), *as amended* April 21, 1975 (Ch. 65, Section 69-6508 and Section 69-6509).

Guidelines: Montana Environmental Quality Council, "Revised Guidelines for Environmental Impact Statements Required by the Montana Environmental Policy Act of 1971," issued September 19, 1975.

State Contact: Steven Perlmutter, Staff Attorney, Montana Environmental Quality Council, Capitol Station, Helena, Montana 59601 (Phone: 406-449-3742).

NEW YORK

Source: New York State Environmental Quality Review Act, Art. 8, New York State Environmental Conservation Law, effective June 1, 1976, as *amended and added* by Section 8-0117 (May 28, 1976).

Guidelines: 6 N.Y.C.R.R., Part 617, effective September 1, 1976.

State Contact: Jane Magee, CEQRA Coordinator, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233 (Phone: 518-457-6557).

NORTH CAROLINA

Source: North Carolina Environmental Policy Act of 1971 (1971, c. 1203, s.1), N.C. Gen. Stat Ch. 113A (Cum. Supp 1973).

Guidelines: North Carolina Department of Administration, "Guidelines for the Implementation of the Environmental Policy Act of 1971," issued February 18, 1972, updated March 1, 1975.

State Contact: Robert Thayer Broili, Environmental Planning Consultant, Department of Natural and Economic Resources, P.O. Box 27687, Raleigh, North Carolina 27611 (Phone: 919-733-2955).

SOUTH DAKOTA

Source: South Dakota Environmental Policy Act, SL 1974, Ch. 245 (approved March 2, 1974), S.D. Comp. Laws 1967, Ch.11-1A (Supp. 1974).

Guidelines: Department of Environmental Protection, 1974 Informal Guidelines.

State Contact: Harold Lenhart, South Dakota Department of Environmental Protection, Foss Building, Pierre, South Dakota 57501 (Phone 605-224- 3351).

VIRGINIA

Source: Virginia Environmental Quality Act of 1973, Ch. 384, Laws of 1973 Approved March 15, 1973) and Ch. 774, Laws of 1972, Va. Code Ann. Sections 10-17.107 through 10-17.112 and 10-177 through 10-186 (Supp. 1973), as *amended* by Ch. 354, Laws of 1974 (approved April 4, 1974), Va. Code Ann. Section 2.1-51.9, Section 10.181, Section 10.183, and Section 10.185, as *amended* by Ch 404, Acts of Assembly,.1977.

Guidelines: *Procedures Manual for Environmental Impact Statements in the Commonwealth of Virginia*, issued by the Governor's Council on the Environment (December 1973; revised January 1975).

State Contact: Reginald Wallace, Environmental Impact Statement Coordinator, Governor's Office, Council on the Environment, Eighth Street Office Building, Richmond, Virginia 23219 (Phone: 804-786-4500).

WASHINGTON

Source: State Environmental Policy Act of 1971, Rev. Code Wash. Ch. 43.21C (Supp. 1973) as *amended* by Sub. Senate Bill 3277, Ch. 179, Laws of 1974 (May 5, 1974).

NOTE For State Highway Project Environmental Impact Report Require menu, see Rev. Code Wash. Ch. 47.04 (Supp. 1973).

Guidelines: "Guidelines for Implementation of the State Environmental Policy Act of 1971,"

prepared by the Department of Ecology as revised by "State Environmental Policy Act Guidelines" (WAC 197-10) issued by the Council on Environmental Policy, January 16, 1976.

State Contact: Peter R. Haskin, Environmental Review Section, Office of Comprehensive Programs, State of Washington Department of Ecology, Olympia, Washington 98504 (Phone: 206-753-6890).

WISCONSIN

Source: Wisconsin Environmental Policy Act of 1971, Ch. 274, Laws of 1971, adding Wisc. Stat. Ann. Ch. 1, Section 1.11, of *et seq.* (Cum. Supp. 1974-1975).

Guidelines: "Guidelines for the Implementation of the Wisconsin Environmental Policy Act," issued by Governor's Executive Order No. 69 (December 1973).

State Contact: Caryl Terrell, State WEPA Coordinator, Office of State Planning and Energy, State Capital, Madison, Wisconsin 53702 (Phone: 608-266-1718).

PUERTO RICO

Source: Puerto Rico Environmental Policy Act, 12 Laws P.R. Ann. Section 1121, *et seq.* (1970).

Guidelines: "Guidelines for the Preparation, Evaluation, and Use of Environmental Impact Statements," issued by the Environmental Quality Board on December 19, 1972.

Contact: Roberto Rexach, Executive Director, Environmental Quality Board, 1550 Ponce de Leon Avenue, 4th Floor, Santurce, Puerto Rico 19910 (Phone: 809-725-5140).

States with Comprehensive Executive or Administrative Orders

MICHIGAN

Source: Michigan Executive Directive 1971-10, as superseded by Michigan Executive Order 1973-9, as superseded by Michigan Executive Order 1974- 4 (May 1974).

Guidelines: Interim Guidelines prepared by Environmental Preview Board and issued June 24, 1974. Revised guidelines were adopted in November 1975.

State Contact: Terry L. Yonker, Executive Secretary, Environmental Review Board, Department of Management and Budget, Lansing, Michigan 48913 (Phone: 517-373-0933).

NEW JERSEY

Source: New Jersey Executive Order No. 53 (October 15, 1973).

Guidelines: "Guidelines for the Preparation of an Environmental Impact Statement," issued by the Office of the Commissioner, Department of Environmental Protection, in 1973 and updated in February 1974.

State Contact: Lawrence Schmidt, Chief, Office of Environmental Review Department of Environmental Protection, P.O. Box 1390, Trenton, New Jersey 08625 (Phone: 609-292-2662).

TEXAS

Source and Guidelines: *Policy for the Environment*, adopted by the Interagency Council on Natural Resources and the Environment on March 7 1972, and published in "Environment for Tomorrow: The Texas Response" subsequently updated by "The Environment Policy Guidelines and Procedures for Processing EISs," developed and adopted by the Interagency Council on Natural Resources and the Environment, published November 1975.

State Contact: Charles D Travis, Director, Governor's Budget and Planning Office, Executive Office Building 411 W. 13th Street, Austin, Texas 78701 (Phone: 512-475-6156).

UTAH

Source: State of Utah Executive Order, August 27, 1974.

Guidelines: As above.

State Contact: William C. Quigley, Assistant Attorney General, State Capitol Building, Office of the Attorney General, Salt Lake City, Utah 84114 (Phone: 801-533-7643).

States with Special or Limited EIS Requirements

ARIZONA

Source: Game and Fish Commission Policy of July 2, 1971.

Guidelines: Memorandum by the Arizona Game and Fish Commission, "Requirements for Environmental Impact Statements," issued June 9, 1971.

State Contact: Robert D. Curtis, Chief, Wildlife Planning and Development Division, Arizona Game and Fish. Commission, 2222 W. Greenery Rd., Phoenix, Arizona 85023 (Phone: 602-942-3000).

DELAWARE

Source: a) Delaware Coastal Zone Act, Ch. 175, Vol. 58, Laws of Del. (June 28, 1971), adding Del. Code Ann. Section 7001 *at seq.* (Supp 1973 and b) Delaware Wetlands Law of 1973, adding 7 Del. Code Ann. Ch. 66 (Supp. 1973).

Guidelines: a) 7 Del. Code Ann. Ch. 66, Section 6604 (Supp. 1973), and "Permit Application Instructions and Forms and Information Material on Required Procedures for the Coastal Zone Act," prepared and published by the Delaware State Planning Office (effective July 1, 1977); this office will be known as the Delaware Office of management. Budget, and Planning., and b) "Department of Natural Resources and Environmental Control, Wetlands Regulations," adopted pursuant to Section 6607 of the Wetlands Act, effective December 23, 1976.

State Contact: a) For the Coastal Zone Act - David Hugg, Manager, Coastal Zone Program. Delaware Office of Management, Budget, and Planning, Dover, Delaware 19901 (Phone: 302-678-4271).

b) For the Wetlands Act - William Moyer, Wetlands Manager, Department of Natural Resources and Environmental Control, Division of Environmental Control, Dover, Delaware

19901 (Phone: 302-678-4761).

GEORGIA

Source: Ga. L. 1972-179 (March 10, 1979), Ga. Code Ann Ch. 95A-1, Section 241 (e) (1) (1973).

Guidelines: *Policy and Procedures Manual: State Tollway authority*, prepared by Georgia's Tollway Administrator's Office in May 1972 and revised in February, 1973.

State Contact: Robert L. Austin, State Location Engineer, Division of Pre-construction. Department of Transportation. 2 Capital Square, Atlanta, Georgia 30334 (Phone: 404-656-5312).

MISSISSIPPI

Source: Title 49, Chapter 27, Mississippi Code of 1972, Section 49-27:1- 49-27:69, amended in 1974 to include 49-27-7(s), relating to wetlands.

Guidelines: Rules and Regulations written by the Mississippi Marine Resources Council, July 10, 1973, revised April 15, 1975.

State Contact: Joe Gill, Jr., Marine Projects Manager Mississippi Marine Resources Council, P.O. Drawer 959, Long Beach, Mississippi 39560 (Phone: 601-864-4602).

NEBRASKA

Source and Guidelines: Nebraska Department of Roads, *Department of Roads Action Plan* (1973), as revised by the *State of ,Nebraska Environmental Action Plan* prepared the Nebraska Department of Roads and approved by the Federal Highway Administration, June 24, 1975.

State Contact: Robert O. Kuzelka, Comprehensive Planning Coordinator Office of Planning and Programming, Box 94601, State Capital, Lincoln Nebraska 68509 (Phone: 402-471-2414).

NEVADA

Source: Ch. 311, Laws of 1971, 58 N.R.S. Ch. 704 (1971).

Guidelines: No guidelines have been issued.

State Contact: Ernest Gregory, Administrator, Environmental Protection Service, Department of Human Resources, 505 E. King Street, Room 600, Carson City, Nevada 89710 (Phone: 702-885 4730).

NEW JERSEY

Source: Coastal Area Facility Review Act, P.L. 1973, Ch. 185 (approved June 20, 1973), N.J.S.A. 13:19-1 *et seq.* (Cum. Supp. 1974-1975), and b) The New Jersey Wetlands Act of 1970, Ch. 272, Laws of 1970, N.J.S.A. 13:9A-1 *at seq.* (Cum. Supp. 1974-1975).

Guidelines: a) "Procedural Rules for the Administration of the Coastal Area Facility Review Act," prepared by the Department of Environmental Protection in 1974 and adopted April 1, 1977 and b) "New Jersey Wetlands Order: Basis and Background," issued by the New Jersey Department of Environmental Protection, April 1972, "Procedural Rules and Regulations to Implement the Wetlands Order," N.J.A.C. 7:7A-1 *et seq.*, adopted September 2, 1976.

State Contact: a) David N. Kinsey, Chief, Office of Coastal Zone Management, New Jersey Department of Environmental Protection, P.O. Box 1889, Trenton, N.J. 08625 (Phone: 609-292-8262), and b) Thomas F. Hampton, Supervisor, Office of Wetlands Management, Division of Marine Services, Department of Environmental Protection, P.O. Box 1889, Trenton, N.J. 08625 (Phone: 609-292-8202).

CITY NEPA's

BOWIE, MARYLAND

Source and Guidelines: The Bowie, Maryland Environmental Policy And Impact Statement Ordinance, passed by the City Council of Bowie, Maryland on May 3, 1971, and Ordinance 0-2-73 of the City Council of Bowie, Maryland, Declaring an Environmental Policy and Providing for Environmental Impact Statements, passed July 16, 1973, and Ordinance 0-14-76, Changing Notification and Referral Requirements under the Ordinance, passed September 8, 1976.

State Contact: Bradford Pryce, Planning Director, Office of Planning and Community Development, City Hall, Bowie, Maryland 20715 (Phone: 301-262-6200).

NEW YORK CITY

Source: Executive Order No. 91, June 1, 1977. New York City is currently working on a replacement policy which will incorporate the Executive Order and the requirements of the New York State Law.

Guidelines: A "City Environmental Policy Executive Order Environmental Information Form" is utilized for environmental analysis. The Information Form was prepared by the City of New York Environmental Protection Administration in 1973.

Contact: Dorothy Green, Director Office of Environmental Impact New York City Department of Environmental Protection, Room 2344, Municipal Building, New York, New York 10007 (Phone: 212-566-4107).

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments

and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the

President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334]. Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341]. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act,

in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344]. It shall be the duty and function of the Council --

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345]. In exercising its powers, functions, and duties under this Act, the Council shall --

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities

will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346]. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a]. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b]. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347]. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) \$2,126,000 for the fiscal year ending September 30, 1979.

(b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Sec. 1506.6 Public involvement.

Agencies shall:

- (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
- (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
 - 1. In all cases the agency shall mail notice to those who have requested it on an individual action.
 - 2. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
 - 3. In the case of an action with effects primarily of local concern the notice may include:
 - (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A- 95 (Revised).
 - (ii) Notice to Indian tribes when effects may occur on reservations.
 - (iii) Following the affected State's public notice procedures for comparable actions.
 - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
 - (v) Notice through other local media.
 - (vi) Notice to potentially interested community organizations including small business associations.
 - (vii) Publication in newsletters that may be expected to reach potentially interested persons.
 - (viii) Direct mailing to owners and occupants of nearby or affected property.
 - (ix) Posting of notice on and off site in the area where the action is to be located.
- (c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
 - 4. Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
 - 5. A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).
- (d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

1. Research activities;
2. Meetings and conferences related to NEPA; and
3. Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

1. There need not be a scoping process.
2. The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.
 - (i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.
 - (ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

1. Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
2. Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons

of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

- (a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.
- (b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT,
AS AMENDED, 42 U.S.C.5121, et seq.

UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF

SUBCHAPTER I--FINDINGS, DECLARATIONS, AND DEFINITIONS

{101} 5121. Congressional findings and declarations

a) The Congress hereby finds and declares that--

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by--

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and

(6) providing Federal assistance programs for both public and private losses sustained in disasters

(7) Repealed. Pub.L. 100-707, Title I, 103(a)(1), Nov. 23, 1988, 102 Stat. 4689

{102} 5122. Definitions As used in this chapter--

(1) Emergency--"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) Major disaster--"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means

(A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and

(B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) Public facility--"Public facility" means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(9) Private nonprofit facility--"Private nonprofit facility" means private nonprofit educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.

UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF

SUBCHAPTER II--DISASTER PREPAREDNESS ASSISTANCE

{201} 5131. Federal and State disaster preparedness program

(a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes--

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

(2) training and exercises;

(3) post-disaster critiques and evaluations;

(4) annual review of programs;

(5) coordination of Federal, State, and local preparedness programs;

(6) application of science and technology;

(7) research.

(b) Technical assistance for development of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to states for development of plans and programs

Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall--

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of State plans

The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State.

{202} 5132. Disaster warnings

(a) Readiness of federal agencies to issue warnings to state and local officials

The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to state and local governments for effective warnings

The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

c) Warnings to governmental authorities and public endangered by disaster

The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title, or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) Agreements with commercial communications systems for use of facilities

The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or non-reimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF

SUBCHAPTER III--MAJOR DISASTER AND EMERGENCY
ASSISTANCE ADMINISTRATION

{301} 5141. Waiver of administrative conditions

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

{301} 5142. Repealed.

Pub.L. 100-707, Title I, 105(a)(2), Nov. 23, 1988, 102 Stat. 4691

{302} 5143. Coordinating officers

(a) Appointment of Federal coordinating officer

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) Functions of federal coordinating officer

In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall--

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599) [36 U.S.C.1 et seq.]; and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

{303} 5144. Emergency support teams

The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or non-reimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

{303} 5145. Repealed

Pub.L. 100-707, Title I,105(d), Nov. 23, 1988, 102 Stat. 4691

5146. Repealed

Pub.L. 100-707, Title I,105(d), Nov. 23, 1988, 102 Stat. 4691

{304} 5147. Reimbursement of federal agencies

Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

{305} 5148. Nonliability of Federal Government

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

{306} 5149. Performance of services

(a) Utilization of services or facilities of state and local governments

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized--

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such Title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contractor otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

{307} 5150. Use of local firms and individuals

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this chapter.

{308} 5151. Nondiscrimination in disaster assistance

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

{309} 5152. Use and coordination of relief organizations

(a) In providing relief and assistance under this chapter, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services, housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require.

{310} 5153. Priority to certain applications for public facility and public housing assistance

(a) Priority

In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:

(1) The United States Housing Act of 1937 [42 U.S.C.1437 et seq.] for the provision of low-income housing.

(2) Section 462 of Title 40 [Section 702 of the Housing Act of 1954, 42 U.S.C. 462] for assistance in public works planning.

(3) The Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) Section 1926 of Title 7 [Section 306 of the Consolidated Farm and Rural Development Act of 1965, 7 U.S.C. 1926].

(5) The Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.].

(6) The Appalachian Regional Development Act of 1965.

(7) The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(b) Obligation of certain discretionary funds

In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

{311} 5154. Insurance

(a) Applicants for replacement of damaged facilities

(1) Compliance with certain regulations

An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3233 of this title shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) Determination

In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Maintenance of insurance

No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3233 of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this chapter unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.

(c) State acting as self-insurer

A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 or 3233 of this title or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a) of this section. No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this chapter, to the extent that insurance for such property or part thereof would have been reasonably available.

{312} 5155. Duplication of benefits

(a) General prohibition

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules

(1) Limitation

This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) Procedures

The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) Effect of partial benefits

Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) Recovery of duplicative benefits

A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency that provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of Title 31 relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) Assistance not income

Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

{313} 5156. Standards and reviews

The President shall establish comprehensive standards that shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this chapter. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this chapter.

{314} 5157. Penalties

(a) Misuse of funds

Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this chapter shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) Civil enforcement

Whenever it appears that any person has violated or is about to violate any provision of this chapter, including any civil penalty imposed under this chapter, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) Referral to Attorney General

The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this chapter that may warrant consideration for criminal prosecution.

(d) Civil penalty

Any individual who knowingly violates any order or regulation issued under this chapter shall be subject to a civil penalty of not more than \$5,000 for each violation.

{315} 5158. Availability of materials

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section "construction materials" shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

{316} 5159. Protection of environment

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173 or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this chapter or under any other provisions of law.

{317} 5160. Recovery of assistance

(a) Party liable

Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law as a result of a declaration of a major disaster or emergency under this chapter shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) Rendering of care

A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

{318} 5161. Audits and investigations

(a) In general

Subject to the provisions of chapter 75 of Title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this chapter, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) Access to records

For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this chapter.

(c) State and local audits

The President may require audits by State and local governments in connection with assistance under this chapter when necessary to assure compliance with this chapter or related regulations.

{319} 5162. Advance of Non-Federal Share

(a) In general

The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this chapter in any case in which--

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions--

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this chapter.

(b) Terms of loans and advances

(1) In general

Any loan or advance under this section shall be repaid to the United States.

(2) Interest

Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

(c) Regulations

The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

{320} 5163. Limitation on use of sliding scales

No geographic area shall be precluded from receiving assistance under this chapter solely by virtue of an arithmetic formula or sliding scale based on income or population.

{321} 5164. Rules and regulations

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this chapter.

UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF

SUBCHAPTER IV--MAJOR DISASTER ASSISTANCE PROGRAMS

{401} 5170. Procedure for declaration

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

{402} 5170a. General Federal Assistance

In any major disaster, the President may--

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for--

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety; and

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

{403} 5170b. Essential Assistance

(a) In general

Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including--

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act [42 U.S.C. 5170 et seq. or 5191 et seq.], the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title [42 U.S.C. 5173(b)], relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines

Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988 [enacted Nov. 23, 1988], the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.

(6) Definitions

For purposes of this section--

(A) Department of Defense

The term 'Department of Defense' has the meaning the term "department" has under section 101 of title 10, United States Code.

(B) Emergency work

The term "emergency work" includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

{Sec 404} 5170c. Hazard Mitigation

(a) In General

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5176 of this title and shall be subject to approval by the President. The total of contributions under this section for a major disaster shall not exceed 15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance--

(1) General authority.

In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions.

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph(1) only if--

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that--

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than--

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Director approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program--

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction

Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on December 3, 1993.

405} 5171. Federal facilities

(a) Repair, reconstruction, restoration or replacement of United States facilities

The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities.

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

{406} 5172. Repair, restoration, and replacement of damaged facilities

(a) Contributions

The President may make contributions--

(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

(2) to a person who owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of such facility and for associated expenses incurred by such person.

(b) Minimum Federal share

The Federal share of assistance under this section shall be not less than--

(1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;

(2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2) of this section; and

(3) 75 percent of associated expenses described in subsections (f)(3), (f)(4), and (f)(5) of this section.

(c) Large in lieu contributions

(1) For public facilities

In any case where a State or local government determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by such State or local government, it may elect to receive, in lieu of a contribution under subsection (a)(1) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated

expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures which the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(2) For private nonprofit facilities

In any case where a person who owns or operates a private nonprofit facility determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing such facility, such person may elect to receive, in lieu of a contribution under subsection (a)(2) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected private nonprofit facilities owned or operated by such person, to construct new private nonprofit facilities to be owned or operated by such person, or to fund hazard mitigation measures which such person determines to be necessary to meet a need for its services and functions in the area affected by the major disaster.

(3) Restriction on use for State or local contribution

Funds provided under this subsection shall not be used for any State or local government cost-sharing contribution required under this chapter.

(d) Flood insurance

(1) Reduction of Federal assistance

If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968(42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph(2).

(2) Amount of reduction

The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of--

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] on such date.

(3) Exception

Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information

The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) Net eligible cost

(1) General rule

For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

(2) Special rule

In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner's responsibility and not the contractor's responsibility.

(f) Associated expenses

For purposes of this section, associated expenses include the following:

(1) Necessary costs

Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:

(A) For an applicant whose net eligible costs equal less than \$100,000, 3 percent of such net eligible costs.

(B) For an applicant whose net eligible costs equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.

(C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess of \$1,000,000.

(D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such net eligible costs in excess of \$5,000,000.

(2) Extraordinary costs

Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under sections 5170b, 5170c, 5172, 5173, 5192 and 5193 of this title in such State in connection with the major disaster as follows:

(A) If such total amount is less than \$100,000, 3 percent of such total amount.

(B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.

(C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.

(D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 percent of such total amount in excess of \$5,000,000.

(3) Costs of National Guard

The costs of mobilizing and employing the National Guard for performance of eligible work.

(4) Costs of prison labor

The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.

(5) Other labor costs

Base and overtime wages for an applicant's employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

{407} 5173. Debris removal

(a) Presidential authority

The President may make contributions--

(1) through the use of Federal departments, agencies, and a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris

or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules that provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

{408} 5174. Temporary housing assistance

(a) Provision of temporary housing

(1) In general

The President may--

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who, as a result of a major disaster, require temporary housing; and

(B) reimburse State and local governments in accordance with paragraph (4) for the cost of sites provided under paragraph (2).

(2) Mobile home site

(A) In general

Any mobile home or other readily fabricated dwelling provided under this section shall whenever possible be located on a site which--

(i) is provided by the State or local government; and

(ii) has utilities provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) Other sites

Mobile homes and other readily fabricated dwellings may be located on sites provided by the President if the President determines that such sites would be more economical or accessible than sites described in subparagraph (A).

(3) Period

Federal financial and operational assistance under this section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) Federal share

The Federal share of assistance under this section shall be 100 percent; except that the Federal share of assistance under this section for construction and site development costs (including installation of utilities) at a mobile home group site shall be 75 percent of the eligible cost of such assistance. The State or local government receiving assistance under this section shall pay any cost that is not paid for from the Federal share.

(b) Temporary mortgage and rental payments

The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of a foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months.

(c) In lieu expenditures

In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition.

(d) Transfer of temporary housing

(1) Direct sale to occupants

Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) Transfers to states, local governments, and voluntary organizations

The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 308 [42 U.S.C. 5171] requiring non-discrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) of this section and to the purposes of providing temporary housing for disaster victims in major disasters or emergencies.

(e) Notification

(1) In general

Each person who applies for assistance under this section shall be notified regarding the type and amount of any assistance for which such person qualifies. Whenever practicable, such notice shall be provided within 7 days after the date of submission of such application.

(2) Information

Notification under this subsection shall provide information regarding--

(A) all forms of such assistance available;

(B) any specific criteria which must be met to qualify for each type of assistance that is available;

(C) any limitations which apply to each type of assistance; and

(D) the address and telephone number of offices responsible for responding to--

(i) appeals of determinations of eligibility for assistance; and

(ii) requests for changes in the type or amount of assistance provided.

(f) Location

In providing assistance under this section, consideration shall be given to the location of and travel time to--

(1) the applicant's home and place of business;

(2) schools which the applicant or members of the applicant's family who reside with the applicant attend; and

(3) crops or livestock which the applicant tends in the course of any involvement in farming which provides 25 percent or more of the applicant's annual income.

5175. Repealed

Pub.L. 100-707, Title I, 105(m)(2), Nov. 23, 1988, 102 Stat. 4696

{409} 5176. Minimum standards for public and private structures

As a condition of any disaster loan or grant made under the provisions of this chapter, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of compliance with this section as may be required by regulation. As a further condition of any loan or grant made under the provisions of this chapter, the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed or approved by the President after adequate consultation with the appropriate elected officials of general purpose local governments, and the State shall furnish such evidence of compliance with this section as may be required by regulation.

{410} 5177. Unemployment assistance

(a) Benefit assistance

The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of Title 26) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States that, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment assistance

(1) State assistance

A State shall provide, without reimbursement from any funds provided under this chapter, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal assistance

The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

{411} 5178. Individual and family grant programs

(a) In general

The President is authorized to make a grant to a State for the purpose of making grants to individuals or families adversely affected by a major disaster for meeting disaster-related necessary expenses or serious needs of such individuals or families in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this chapter or through other means.

(b) Cost sharing

(1) Federal share

The Federal share of a grant to an individual or a family under this section shall be equal to 75 percent of the actual cost incurred.

(2) State contribution

The Federal share of a grant under this section shall be paid only on condition that the remaining 25 percent of the cost is paid to an individual or family from funds made available by a State.

(c) Regulations

The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants under this section.

(d) Administrative expenses

A State may expend not to exceed 5 percent of any grant made by the President to it under subsection (a) of this section for expenses of administering grants to individuals and families under this section.

(e) Administration through Governor

The Governor of a State shall administer the grant program authorized by this section in the State.

(f) Limit on grants to individuals

No individual or family shall receive grants under this section aggregating more than \$10,000 with respect to any single major disaster. Such \$10,000 limit shall annually be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

{412} 5179. Food coupons and distribution

(a) Persons eligible; terms and conditions

Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies

coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (Pub.L 91-671; 84 Stat. 2048)[7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C.A. 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

{413} 5180. Food commodities

(a) Emergency mass feeding

The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States that suffers a major disaster or emergency.

(b) Funds for purchase of food commodities

The Secretary of Agriculture shall utilize funds appropriated under section 612c of Title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

{414} 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub.L 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

{415} 5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

{416} 5183. Crisis counseling assistance and training

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

{417} 5184. Community disaster loans

(a) The President is authorized to make loans to any local government that may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

{418} 5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

{419} 5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

{420} 5187. Fire suppression grants

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland that threatens such destruction as would constitute a major disaster.

{421} 5188. Timber sale contracts

(a) Cost-sharing arrangement

Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a

major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority

If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale

The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 of Title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber

The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

{422}5189. Simplified procedure

If the Federal estimate of the cost of--

(1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 5170b or 5192 of this title, or

(3) debris removed under section 5173 of this title,

is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted

annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

{423}5189a. Appeals of assistance decisions

(a) Right of appeal

Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for decision

A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules

The President shall issue rules that provide for the fair and impartial consideration of appeals under this section.

{424}5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

UNITED STATES CODE TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF
SUBCHAPTER IV-A--EMERGENCY ASSISTANCE PROGRAMS

{501} 5191. Procedure for declaration

(a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As apart of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources that have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

{502} 5192. Federal emergency assistance

(a) Specified

In any emergency, the President may--

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for--

- (A) the performance of essential community services;
- (B) issuance of warnings of risks or hazards;
- (C) public health and safety information, including dissemination of such information;
- (D) provision of health and safety measures; and
- (E) management, control, and reduction of immediate threats to public health and safety;

(4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 5173 of this title;

(6) provide temporary housing assistance in accordance with section 5174 of this title; and

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

(b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

{503} 5193. Amount of assistance

(a) Federal share

The Federal share for assistance provided under this subchapter shall be equal to not less than 75 percent of the eligible costs.

(b) Limit on amount of assistance

(1) In general

Except as provided in paragraph (2), total assistance provided under this subchapter for a single emergency shall not exceed \$5,000,000.

(2) Additional assistance

The limitation described in paragraph (1) may be exceeded when the President determines that--

- (A) continued emergency assistance is immediately required;
- (B) there is a continuing and immediate risk to lives, property, public health or safety; and
- (C) necessary assistance will not otherwise be provided on a timely basis.

3) Report

Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

UNITED STATES CODE TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF
SUBCHAPTER IV-B--EMERGENCY PREPAREDNESS

{601}5195. Declaration of policy

The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.

{602} 5195a. Definitions

(a) Definitions

For purposes of this subchapter only:

(1) Hazard

The term "hazard" means an emergency or disaster resulting from--

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural disaster

The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency preparedness

The term "emergency preparedness" means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of

personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational equipment

The term "organizational equipment" means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials

The term "materials" includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities

The term "facilities", except as otherwise provided in this subchapter, includes buildings, shelters, utilities, and land.

(7) Director

The term "Director" means the Director of the Federal Emergency Management Agency.

(8) Neighboring countries

The term "neighboring countries" includes Canada and Mexico.

(9) United States and States

The terms "United States" and "States" includes the several States, the District of Columbia, and territories and possessions of the United States.

(10) State

The term "State" includes interstate emergency preparedness authorities established under section 5196(h) of this title.

(b) Cross reference

The terms "national defense" and "defense," as used in the Defense Production Act of 1950 (50 U.S.C.App. 2061 et seq.), includes emergency preparedness activities conducted pursuant to this subchapter.

{603} 5195b. Administration of subchapter

This subchapter shall be carried out by the Director of the Federal Emergency Management Agency.

{611} 5196. Detailed functions of administration

(a) In general

In order to carry out the policy described in section 5195 of this title, the Director shall have the authorities provided in this section.

(b) Federal emergency response plans and programs

The Director may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Director may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

(c) Delegation of emergency preparedness responsibilities

With the approval of the President, the Director may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.

(d) Communications and warnings

The Director may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.

(e) Emergency preparedness measures

The Director may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including--

(1) research and studies as to the best methods of treating the effects of hazards;

(2) developing shelter designs and materials for protective covering or construction; and

(3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements.

(f) Training programs

(1) The Director may--

(A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;

(B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of Title 5, and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and

(C) provide instructors and training aids as necessary.

(2) The terms prescribed by the Director for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.

(3) The Director may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.

(g) Public dissemination of emergency preparedness information

The Director may publicly disseminate appropriate emergency preparedness information by all appropriate means.

(h) Interstate emergency preparedness compacts

(1) The Director may--

(A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

(B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;

(C) assist and coordinate the activities under such compacts; and

(D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.

(2) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress

(3) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.

(i) Materials and facilities

(1) The Director may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.

(2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this subchapter before the approval of title by the Attorney General as required by section 255 of Title 40.

(3) The Director shall submit to Congress a report, at least quarterly, describing all property acquisitions made pursuant to this subsection.

(4) The Director may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.

(5) The Director may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Director shall prescribe.

(j) Financial contributions

(1) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Director shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.

(2) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.

(3) The amounts authorized to be contributed by the Director to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.

(4) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Director for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Director) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.

(5) The amounts authorized to be contributed by the Director to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Director may reallocate such amounts to other States under the formula described in paragraph (4). The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

(6) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Director. The Director shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which

(A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and

(B) is of such kind that upon completion it will, in the judgment of the Director, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost;

except that (subject to the preceding provisions of this subsection) the Director may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Director determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Director necessary for the use of such facility for emergency preparedness purposes.

(7) The Director shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.

(8) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Director under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a to 276a-5)), and every such employee shall receive compensation at a rate not less than one and 1/2 times the basic rate of pay of the employee for all hours worked in any workweek in excess of

eight hours in any workday or 40 hours in the workweek, as the case may be. The Director shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 276c of Title 40.

(k) Sale or disposal of certain materials and facilities

The Director may arrange for the sale or disposal of materials and facilities found by the Director to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

{612}5196a. Mutual aid pacts between States and neighboring countries

The Director shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

{613}5196b. Contributions for personnel and administrative expenses

(a) General authority

To further assist in carrying out the purposes of this subchapter, the Director may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.

(b) Plan requirements

A plan submitted under this section shall--

(1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;

(2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;

(3) provide for the development of State and local emergency preparedness operational plans, pursuant to standards approved by the Director;

(4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;

(5) provide that the State shall make such reports in such form and content as the Director may require; and

(6) make available to duly authorized representatives of the Director and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section.

(c) Terms and conditions

The Director shall establish such other terms and conditions as the Director considers necessary and proper to carry out this section.

(d) Application of other provisions

In carrying out this section, the provisions of sections 5196(h) and 5197(h) of this title shall apply.

(e) Allocation of funds

For each fiscal year concerned, the Director shall allocate to each State, in accordance with regulations and the total sum appropriated under this subchapter, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to

(1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States,

(2) the relative state of development of emergency preparedness readiness of the State,

(3) population, and

(4) such other factors as the Director shall prescribe.

The Director may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.

(f) Submission of plan

If a State fails to submit a plan for approval as required by this section within 60 days after the Director notifies the States of the allocations under this section, the Director may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Director, will best assure the adequate development of the emergency preparedness capability of the United States.

(g) Annual reports

The Director shall report annually to the Congress all contributions made pursuant to this section.

{614}5196c. Requirement for State matching funds for construction of emergency operating centers

Notwithstanding any other provision of this subchapter, funds appropriated to carry out this subchapter may not be used for the purpose of constructing emergency operating centers (or similar facilities) in any State unless such State matches in an equal amount the amount made available to such State under this subchapter for such purpose.

{615} 5196d. Use of funds to prepare for and respond to hazards

Funds made available to the States under this subchapter may be used by the States for the purposes of preparing for hazards and providing emergency Assistance in response to hazards. Regulations prescribed to carry out this Section shall authorize the use of emergency preparedness personnel, materials, And facilities supported in whole or in part through contributions under this Subchapter for emergency preparedness activities and measures related to Hazards.

{621} 5197. Administrative authority

(a) In general

For the purpose of carrying out the powers and duties assigned to the Director under this subchapter, the Director may exercise the administrative authorities provided under this section.

(b) Advisory personnel

(1) The Director may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Director considers to be necessary in carrying out the provisions of this subchapter.

(2) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Director.

(c) Services of other agency personnel and volunteers

The Director may--

(1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;

(2) establish and use such regional and other offices as may be necessary; and

(3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.

(d) Gifts

Notwithstanding any other provision of law, the Director may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this subchapter.

(e) Reimbursement

The Director may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this subchapter to the extent funds are available.

(f) Printing

The Director may purchase such printing, binding, and blank-book or binderies as the Director considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of Title 44.

(g) Rules and regulations

The Director may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this subchapter and perform any of the powers and duties provided by this subchapter. The Director may perform any of the powers and duties provided by this subchapter through or with the aid of such officials of the Federal Emergency Management Agency as the Director may designate.

(h) Failure to expend contributions correctly

(1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this subchapter for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this subchapter (or from funds otherwise available for the purposes of this subchapter for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.

(2) Until so satisfied, the Director shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

(3) As used in this subsection, the term "person" means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

{622} 5197a. Security regulations

(a) Establishment

The Director shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Director considers necessary.

(b) Limitations on employee access to information

No employee of the Federal Emergency Management Agency shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Director.

(c) National security positions

No employee of the Federal Emergency Management Agency shall occupy any position determined by the Director to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Director of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Director of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Director of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Director of the Federal Emergency Management Agency may refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Director of the Federal Emergency Management Agency for action.

(d) Employee oaths

Each Federal employee of the Federal Emergency Management Agency acting under the authority of this subchapter, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title, shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation

or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of _____ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence."

After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of Title 18.

{623} 5197b. Use of existing facilities

In performing duties under this subchapter, the Director--

(1) shall cooperate with the various departments and agencies of the Federal Government;

(2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and

(3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter.

{624} 5197c. Annual report to Congress

The Director shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this subchapter, accompanied by such recommendations as the Director considers appropriate.

{625} 5197d. Applicability of subchapter

The provisions of this subchapter shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

{626} 5197e. Authorization of appropriations and transfers of funds

(a) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(b) Transfer authority

Funds made available for the purposes of this subchapter may be allocated or transferred for any of the purposes of this subchapter, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this subchapter. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

{627} 5197f. Relation to Atomic Energy Act of 1954

Nothing in this subchapter shall be construed to alter or modify provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

{628} 5197g. Federal Bureau of Investigation

Nothing in this subchapter shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

UNITED STATES CODE ANNOTATED TITLE 42.
THE PUBLIC HEALTH AND WELFARE
CHAPTER 68--DISASTER RELIEF
SUBCHAPTER V--MISCELLANEOUS

{701} 5201. Rules and regulations; acceptance of gifts

(a) (1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(2) Deadline for payment of assistance

Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this chapter to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

{701} 5202. Repealed.

Pub.L. 100-707, Title I, 108(c), Nov. 23, 1988, 102 Stat. 4708

{701} 5203. Excess disaster assistance payments as budgetary emergency requirements

Beginning in fiscal year 1993, and in each year thereafter, notwithstanding any other provision of law, all amounts appropriated for disaster assistance payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that are in excess of either the historical annual average obligation of \$320,000,000, or the amount submitted in the President's initial budget request, whichever is lower, shall be considered as "emergency requirements" pursuant to section 901(b)(2)(D) of Title 2, and such amounts shall hereafter be so designated.

{701} 5204. Insular areas disaster survival and recovery; definitions

As used in sections 5204 to 5204c of this title--

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;

(2) the term "disaster" means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and

(3) the term "Secretary" means the Secretary of the Interior.

{701} 5204a. Authorization of appropriations for insular areas

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to--

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to February 24, 1992; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas, except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 403 and 406 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172) for such disaster. Such sums shall remain available until expended.

{701} 5204b. Technical assistance for insular areas

(a) Presidential assessment of response capability; recovery plans

Upon the declaration by the President of a disaster in an insular area, the President, acting through the Director of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area that the President deems necessary for the recovery effort.

(b) Report to Congress

One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

{701} 5204c. Hazard mitigation for insular areas

The total of contributions under the last sentence of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act [42 U.S.C. 5170b, 5172, 5173, 5174, and 5178] for any disaster: Provided, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act [42 U.S.C. 5172] for any disaster.

RECORD OF ENVIRONMENTAL REVIEW
FEMA-REGION III
FEMA Disaster Relief: FEMA-1378-DR-WV

Applicant: Federal Emergency Management Agency

PW #: _____

PA ID: _____

Project Location: _____

Project Title: Temporary Group Housing Sites

I. Compliance Review for Environmental Laws (other than NEPA)

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their actions on historic properties. The section 106 review process includes the following steps for identifying and evaluating historic properties and archeological resources.

HISTORIC STRUCTURES

An undertaking may have an effect on a historic structure if it alters the characteristics that qualify the structure for inclusion in the National Register of Historic Places (NRHP). Generally, structures 50 years of age or older may qualify for the National Register.

Historic Structures (Is the structure on or adjacent to the site known to be historic or 50 years of age or older?)

No ☐ Yes ☐ (explain)

Historic District (Is the structure located in or adjacent to a historic district?)

No ☐ Yes ☐ (explain)

ARCHEOLOGICAL RESOURCES

Undertakings that involve ground-disturbing activities on previously undisturbed ground and projects that have the potential to affect archeological resources should be evaluated using the following criteria:

Disturbed Ground (Will the project have an effect on previously disturbed ground?)

No ☐ Yes ☐ (explain)

Undisturbed Ground (Will the project cause greater than minor disturbance on undisturbed ground?)

No ☐ Yes ☐ (explain)

Known Archeological Resources (Are archeological resources present in the project area?)

No ☐ Yes ☐ (explain)

Archeological Potential (What is the likelihood that an archeological site is present?)

Low ☐ High ☐ (explain)

EVALUATION OF ELIGIBILITY Properties should be evaluated using the following criteria. (Check all that apply)

Event (Is property associated with significant events in U.S. history?)

No ☐ Yes ☐ (explain)

Person (Is property associated with the lives of persons significant in the past?)

No ☐ Yes ☐ (explain)

Design/Construction (Is property significant for its physical design or construction?)

No ☐ Yes ☐ (explain)

Information Potential (Has property yielded important historical information?)

No ☐ Yes ☐ (explain)

HISTORIC PROPERTIES ELIGIBILITY (Information on eligibility is available from lists provided by the State Historic Preservation Officer (SHPO))

Property is listed or eligible for listing on National Register ☐

Property is listed on State Register ☐

Property is Not Eligible for National Register ☐

DETERMINATION OF EFFECT (Determinations of Effect must be made by persons who meet the Secretary of the Interior's Qualification Standards)

Comments:

B. Clean Water Act

☐ Project site located outside of and would not affect any waters of the U.S. Review concluded.

☐ Project site located in or would affect waters of the U.S.

☐ Project qualifies for existing General or Nationwide permit. Review concluded.

Are project conditions required?

☐ YES ☐ NO

☐ Applicant must acquire one or more permits before initiating project work.

Are project conditions required?

☐ YES ☐ NO

Comments:

C. Endangered Species Act

☐ Project does not affect the physical environment (land disturbance, vegetation removal, sedimentation, dust, noise/waste/hazardous materials emission into the environment, etc.). Review concluded.

☐ Project affects the physical environment

☐ Threatened or endangered species or critical habitat not present in or near project site. Review concluded.

☐ Species or critical habitat present in or near project site.

☐ Review and consultation process completed and on file.

Are project conditions required?

☐ YES ☐ NO

Comments:

D. Fish and Wildlife Coordination Act

☐ Project located outside of a natural stream or body of water or will not affect any natural stream or body of water. Review concluded.

☐ Project is in or affects a natural stream or body of water.

☐ Consultation with U.S. Fish and Wildlife Service/National Marine Fisheries Service complete and on file.

Are project conditions required?

☐ YES ☐ NO

Comments:

E. Magnuson-Stevens Fishery Conservation and Management Act

☐ Project is not located near nor has an effect on Essential Fish Habitat. Review Concluded.

☐ Project near or has an effect on Essential Fish Habitat.

☐ Consultation with National Marine Fisheries completed and on file.

Are project conditions required?

☐ YES ☐ NO

Comments:

F. Wild and Scenic Rivers Act

☐ Project is not along and does not affect Wild or Scenic River. Review concluded.

☐ Project is along or affects Wild or Scenic River.

☐ Consultation complete and on file.

Are project conditions required?

☐ YES ☐ NO

Comments:

G. Coastal Zone Management Act/Coastal Barrier Resources Act

☐ Project is not located in a coastal zone/coastal barrier area. Review concluded.

☐ Project is located in a coastal zone/coastal barrier area.

☐ Consultation with appropriate agency completed.

Are project conditions required?

☐ YES ☐ NO

Comments:

H. Clean Air Act

☐ Project will not result in permanent air emissions. Review concluded.

☐ Project is located in an attainment area. No further review required.

☐ Project is located in a non-attainment area. Coordination required.

☐ Project conditions required and stated below.

☐ Project does not involve vegetative, debris or animal carcass burning. Review concluded.

☐ Project involves vegetative, debris or animal carcass burning. Applicant has acquired all necessary permits. Review concluded.

Comments:

I. Hazardous and Toxic Waste

- ☐ A Toxic Waste/Hazardous Materials Site Assessment was conducted.
- ☐ Project site does not contain any known or observed hazardous or toxic material. Review concluded.
- ☐ Project site contains hazardous or toxic material.
- ☐ Applicant has obtained all necessary permits. Review concluded.
- ☐ Are project conditions required? ☐ Yes ☐ NO

Comments:

J. Farmland Protection Policy Act

- ☐ Project does not affect prime or unique farmland. Review concluded.
- ☐ Project affects prime or unique farmland. Coordination with Natural Resource Conservation Commission required.
- ☐ Farmland Conversion Impact Rating, Form AD-1006, completed.
- ☐ Are project conditions required? ☐ Yes ☐ No

Comments:

K. Other Relevant Laws and Environmental Regulations

Identify Law/Regulations, Issues, and Resolution

Comments:

II. Compliance Review for Executive Orders

A. E.O. 11988 - Floodplains

- ☐ Project located outside Floodplain and No Effect on Floodplains. Review concluded.
- ☐ Project located in Floodplain or affects Floodplains/Flood levels
- ☐ Minimal investment in floodplain. Review concluded.
- ☐ Beneficial Effect on Floodplain Occupancy/Values. Review concluded.
- ☐ Possible adverse effects associated with investment in floodplain, occupancy or modification of floodplain environment.
- ☐ 8 Step Process Complete - public notice and documentation on file. Review concluded.

Are project conditions required?

☐ YES ☐ NO

Comments:

B. E.O. 11990 - Wetlands

- ☐ Project located outside Wetland and No Effect on Wetlands. Review concluded.
- ☐ Project located in Wetland or Effects on Wetlands.
- ☐ Beneficial Effect on Wetland - review concluded.
- ☐ Possible adverse effect associated with constructing in or near wetland
- ☐ 8 Step Process Complete - public notice and documentation on file - review concluded.

Are project conditions required?

☐ YES ☐ NO

Comments:

C. E.O. 12898 - Environmental Justice For Low Income and Minority Populations

- ☐ No Low income or Minority Population in or near project area. Review concluded.
- ☐ No Adverse effects to any population. Review concluded.
- ☐ Low income or Minority Population in or near project area
- ☐ No disproportionately high or adverse effects on low income or minority population. Review concluded.
- ☐ Disproportionately high or adverse effects on low income or minority population
- ☐ Public involvement, assessment, and mitigative measures resolved. Review concluded.

Are project conditions required?

☐ YES ☐ NO

Comments:

D. E.O. 13093 - American Heritage Rivers

- ☐ Project is not on or near or has no affect on a river. Review concluded.
- ☐ Project is near or has an effect on a designated river.
- ☐ Consultation completed and on file. Review concluded.

Are project conditions required?

☐Yes

☐No

Comments:

III. Other Environmental Issues

Identify other potential environmental concerns in the comment box not clearly falling under a law or executive order.

Comments:

IV. Extraordinary Circumstances

Based on the review of compliance with other environmental laws and Executive Orders, and in consideration of other environmental factors, review the project for extraordinary circumstances.

* A "YES" under any circumstance requires an Environmental Assessment (EA) with the exception of (ii) which should be applied in conjunction with controversy on an environmental issue.

YES NO

- ☐ ☐ (i) Greater scope or size than normally experienced for a particular category of action
- ☐ ☐ (ii) Actions with a high level of public controversy
- ☐ ☐ (iii) Potential for degradation, even though slight, of already existing poor environmental conditions;
- ☐ ☐ (iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;
- ☐ ☐ (v) Presence of hazardous or toxic substances at levels that exceed Federal, state or local regulations or standards requiring action or attention;
- ☐ ☐ (vi) Presence of endangered or threatened species or their critical habitat, or archeological, cultural, historical or other protected resources;
- ☐ ☐ (vii) Actions with the potential to affect special status areas adversely or other critical resources such as wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principle drinking water aquifers:
- ☐ ☐ (viii) Potential for adverse effects on health or safety;
- ☐ ☐ (ix) Potential to violate a federal, state, local or tribal law or requirement imposed for the protection of the environment.
- ☐ ☐ (x) Potential for significant cumulative impact when the proposed action is combined with other past, present and reasonably foreseeable

future actions, even though the impacts of the proposed action may not be significant by themselves.

Comments:

V. Environmental Review Project Conditions

1. If ground disturbing activities occur during implementation, the applicant will monitor excavation activity, and if any artifacts or human remains are found during the excavation process all work is to cease immediately and the applicant will notify FEMA, the State Emergency Management office, and the State Historic Preservation Officer for further guidance.

2. The applicant must follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If there is an unusual material encountered or there is an extraordinary amount of lead, asbestos, or other routinely encountered material the applicant will contact FEMA, the State Emergency Management office, and the relevant agency with authority for regulation of the material.

3. Significant change, addition and/or supplement to the approved scope of work which alters the pre-existing use and function, including additional work not funded by FEMA but performed substantially at the same time, will require re-submission of the application prior to construction to FEMA for re-evaluation under the National Environmental Policy Act.

4. The applicant must follow all applicable local, State and Federal laws, regulations and requirements and obtain and comply with all required permits and approvals prior to initiating work on this project.

Other Required Project Specific Conditions

- ☐ NO
☐ Other required project specific conditions:

Conditions:

Prepared By:

Title:

Organization:

Date:

Endangered Species Act of 1973

(PL 93-205; 16 USC 1531 et seq., as amended)

This act protects animal and plant species currently in danger of extinction (endangered) and those that may become endangered in the foreseeable future (threatened). The Endangered Species Act of 1973 provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through Federal action and by encouraging the establishment of state programs. The act:

- Authorizes the determination and listing of species as endangered and threatened
- Prohibits unauthorized taking, possession, sale, and transport of endangered species
- Provides authority to acquire land for the conservation of listed species, using land and water conservation funds
- Authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants
- Authorizes the assessment of civil and criminal penalties for violating the act or regulations
- Authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the act.

Section 7 of this act requires Federal agencies to ensure that all federally associated activities within the United States do not harm the continued existence of threatened or endangered species or designated areas (critical habitats) important in conserving those species.

Agencies must consult with the U.S. Fish and Wildlife Service (FWS), which maintains current lists of species designated as threatened or endangered, to determine the potential impacts a project may have on protected species. The FWS has established a system of informal and formal consultation procedures. The FWS preparation of a Biological Opinion will conclude formal consultation.

The result of informal or formal consultations with the FWS under Section 7 of the Endangered Species Act Amendments of 1978 should be described and documented in a NEPA compliance document.

National Historic Preservation Act of 1966 (as amended)

(PL 89-665; 16 U.S.C. 470a, et seq.) (PL 89-665; 80 Stat. 915, amended 1980, 1992) (PL 96-515; 94 Stat. 2997)

The applicable regulations are:

- 36 CFR 67, *National Register of Historic Places*
- 36 CFR 65, National Historic Landmarks
- 36 CFR 800, Protection of Historic Properties (Advisory Council on Historic Preservation)
- 36 CFR 801, Urban Development Action Grant Program - Historic Preservation Requirements
- 36 CFR 61, Procedures for Approved State and Local Government Programs
- 36 CFR 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places
- The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation

Declares Federal policy to protect historic sites and values in cooperation with other nations, states, and local governments. It establishes a program of grants-in-aid to states for historic preservation activities. Subsequent amendments designated the State Historic Preservation Officer (SHPO) as the individual responsible for administering programs in the states.

The act also creates the President's Advisory Council on Historic Preservation (Advisory Council). Federal agencies are required to consider the effects of their undertakings on historic resources and to give the Advisory Council a reasonable opportunity to comment on those undertakings.

In 1980, a series of amendments to the National Historic Preservation Act and other preservation legislation included:

- Codifying portions of Executive Order 11593 of 1971 (Protection and Enhancement of the Cultural Environment) (16 USC 470)
- Requiring an inventory of Federal resources and Federal agency programs to protect historic resources
- Clarification that Federal agencies can consider inventory and evaluation of resources to be excluded from the 1-percent fund limit under the 1974 act (only actual data recovery activities must be included within the 1 percent)
- Authorization for Federal agencies to charge reasonable costs, for protection activities, to Federal permittees and licenses.

This last provision resolved a controversy about whether private interests could be required to pay costs of protecting archeological and historic resources that would otherwise be destroyed by those activities.

February 11, 1994

EXECUTIVE ORDER 12898

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice. (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

- (4) assist in coordinating data collection, required by this order;
- (5) examine existing data and studies on environmental justice;
- (6) hold public meetings as required in section 5-502(d) of this order; and
- (7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies. (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

[§1-103(e) amended by E.O. 12948, 60 FR 6381, Feb. 1, 1995]

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis. To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information.

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

/s/ William J. Clinton
THE WHITE HOUSE
February 11, 1994.

National Ambient Air Quality Standards (NAAQS)

Prior to the 1990 Amendments, the EPA promulgated national primary and secondary ambient air quality standards for six "criteria" pollutants: particulates, nitrogen oxides, sulfur dioxides, lead, ozone, and carbon monoxide. National "primary" ambient air quality standards are those standards which, in the judgment of the Administrator, if attained and maintained will provide an adequate margin of safety to protect the public health. A national "secondary" ambient air quality standard is a standard of air quality which, in the Administrator's judgment, is required to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

States are required to submit "state implementation plans" (SIP's) through which they are to impose control measures which will allow them to meet the established ambient air quality standards. As part of the SIP, states must submit lists of non-attainment areas, i.e., those areas that would not meet primary or secondary ambient air quality standards by the deadlines as set forth in the Act.

**Regulatory Program of the
US Army Corps of Engineers
SECTION 401 OF THE CLEAN WATER ACT**

(AS CONTAINED IN THE CODE OF FEDERAL REGULATIONS, JAN 24, 1994)

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 26 - WATER
POLLUTION PREVENTION AND CONTROL SUBCHAPTER IV - PERMITS AND
LICENSES**

Sec. 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension.

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to

insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in

(A) the construction or operation of the facility,

(B) the characteristics of the waters into which such discharge is made,

(C) the water quality criteria applicable to such waters or

(D) applicable effluent limitations or other requirements.

This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements. Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant,

provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees. In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification. Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

SOURCE

(June 30, 1948, ch. 758, title IV, Sec. 401, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 877; amended Dec. 27, 1977, Pub. L. 95-217, Sec. 61(b), 64, 91 Stat. 1598, 1599.)

AMENDMENTS

1977 - Subsec. (a). Pub. L. 95-217 inserted reference to section 1313 of this title in pars. (1), (3), (4), and (5), struck out par. (6) which provided that no Federal agency be deemed an applicant for purposes of this subsection, and redesignated par. (7) as (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1314, 1365, 1371, 1377 of this title.

40 CFR Part 122 National Pollutant Discharge Elimination System (NPDES)

Sec. 122.1 Purpose and scope.

(a) Coverage. (1) These regulations contain provisions for the National Pollutant Discharge Elimination System (NPDES) Program under section 318, 402, and 405 of the Clean Water Act (CWA).

(b) Scope of the NPDES permit requirement (part 122). (1) The NPDES program requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States.' [Definitions in Sec.122.2].

(2) The following are point sources requiring NPDES permits for discharges:

(iv) Discharges of storm water as set forth in Sec. 122.26;

Sec. 122.2 Definitions.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Discharge of a pollutant means:

(a) Any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source,' or (b) Any addition of any pollutant or combination of pollutants to the waters of the 'contiguous zone' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyance owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any 'indirect discharger.' (Indirect discharger means a non-domestic discharger introducing pollutants to a POTW.)

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

Waters of the United States or waters of the U.S. means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate 'wetlands;'

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, 'wetlands,' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
- (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) 'Wetlands' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Sec. 122.26 Storm water discharges

(a) Permit requirement. (1) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

- (i) A discharge with respect to which a permit has been issued prior to February 4, 1987;
- (ii) A discharge associated with industrial activity (see Sec. 122.26(a)(4));
- (iii) A discharge from a large municipal separate storm sewer system;
- (iv) A discharge from a medium municipal separate storm sewer system;
- (v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at Sec. 122.2.

Regulatory Program of the US Army Corps of Engineers

SECTION 404 OF THE CLEAN WATER ACT

(AS CONTAINED IN THE WITH CODE OF FEDERAL REGULATIONS, JAN 1994)

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL SUBCHAPTER IV - PERMITS AND LICENSES

Sec. 1344. Permits for dredged or fill material

(a) Discharge into navigable waters at specified disposal sites

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) "Secretary" defined

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e) General permits on State, regional, or nationwide basis

(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall

(A) be based on the guidelines described in subsection (b)(1) of this section, and

(B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material –

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 1288(b)(4) of this title which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) State administration

(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) Determination of State's authority to issue permits under State program; approval; notification; transfers to State program

(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which –

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 1318 of this title, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State –

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Withdrawal of approval

Whenever the Administrator determines after public hearing that a State is not administering a program approved under subsection (h)(2)(A) of this section, in accordance with this section,

including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall

(1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and

(2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Copies of applications for State permits and proposed general permits to be transmitted to Administrator

Each State which is administering a permit program pursuant to this section shall transmit to the Administrator

(1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and

(2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects

(A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E) of this section, or

(B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this chapter.

(k) Waiver

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) Categories of discharges not subject to requirements

The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Comments on permit applications or proposed general permits by Secretary of the Interior acting through Director of United States Fish and Wildlife Service

Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that

- (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or
- (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Enforcement authority not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(o) Public availability of permits and permit applications

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance

Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1317, and 1343 of this title.

(q) Minimization of duplication, needless paperwork, and delays in issuance; agreements

Not later than the one-hundred-eightieth day after December 27, 1977, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section

will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s) Violation of permits

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such person to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers. (3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action (Note: Probably should be action) shall be given immediately to the appropriate State.

(4) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

(t) Navigable waters within State jurisdiction

Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of

dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

SOURCE

(June 30, 1948, ch. 758, title IV, Sec. 404, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 884; amended Dec. 27, 1977, Pub. L. 95-217, Sec. 67(a), (b), 91 Stat. 1600; Feb. 4, 1987, Pub. L. 100-4, title III, Sec. 313(d), 101 Stat. 45.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (r), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (Sec. 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1987 - Subsec. (s). Pub. L. 100-4 redesignated par. (5) as (4), substituted "\$25,000 per day for each violation" for "\$10,000 per day of such violation", inserted provision specifying factors to consider in determining the penalty amount, and struck out former par. (4) which read as follows: "(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both. "(B) For the purposes of this paragraph, the term 'person' shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer." 1977 - Subsec. (a). Pub. L. 95-217, Sec. 67(a)(1), substituted "The Secretary" for "The Secretary of the Army, acting through the Chief of Engineers," and inserted provision that, not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary publish the notice required by this subsection. Subsecs. (b), (c). Pub. L. 95-217, Sec. 67(a)(2), substituted "the Secretary" for "the Secretary of the Army". Subsecs. (d) to (t). Pub. L. 95-217, Sec. 67(b), added subsecs. (d) to (t).

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of the Environmental Protection Agency and of Secretary or other official in Department of Interior relating to review of the Corps of Engineers' dredged and fill material permits and such functions of Secretary of the Army, Chief of Engineers, or other official in Corps of Engineers of the United States Army relating to compliance with dredged and fill material permits issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Sec. 102(a), (b), (e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

AUTHORITY TO DELEGATE TO STATE OF WASHINGTON FUNCTIONS OF THE SECRETARY RELATING TO LAKE CHELAN, WASHINGTON

Section 76 of Pub. L. 95-217 provided that: "The Secretary of the Army, acting through the Chief of Engineers, is authorized to delegate to the State of Washington upon its request all or any part of those functions vested in such Secretary by section 404 of the Federal Water Pollution Control Act (this section) and by sections 9, 10, and 13 of the Act of March 3, 1899 (sections 401, 403, and 407 of this title), relating to Lake Chelan, Washington, if the Secretary determines (1) that such State has the authority, responsibility, and capability to carry out such functions, and (2) that such delegation is in the public interest. Such delegation shall be subject to such terms and conditions as the Secretary deems necessary, including, but not limited to, suspension and revocation for cause of such delegation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 59j-1, 59y, 59bb, 59cc, 59dd, 59ff, 59gg, 59hh, 426p, 1251, 1285, 1288, 1311, 1318, 1319, 1342, 1377, 2104, 2317 of this title; title 42 section 9601.

May 24, 1977

EXECUTIVE ORDER 11988

FLOODPLAIN MANAGEMENT

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1.

Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2.

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in

accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3.

In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the

National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4.

In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5.

The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6.

As used in this Order: (a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7.

Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8.

Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 9.

To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER
THE WHITE HOUSE
May 24, 1977

May 24, 1977

EXECUTIVE ORDER 11990

PROTECTION OF WETLANDS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1.

(a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on nonFederal property.

Sec. 2.

(a) In furtherance of of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3))to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

Sec. 3.

Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Sec. 4.

When Federally owned wetlands or portion wetlands are proposed for lease, easement, right of or disposal to non-Federal public or private parties Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Sec. 5.

In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

- (a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;
- (b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and
- (c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Sec. 6.

As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

Sec. 7.

As used in this Order:

- (a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.
- (b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Sec. 8.

This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Sec. 9.

Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 10.

To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter
THE WHITE HOUSE
May 24, 1977

NOISE CONTROL ACT OF 1972

HISTORY: Public Law 92-574, Oct. 27, 1972; 86 Stat. 1234; 42 USC 4901 et seq.; Amended by PL 94-301, May 31, 1976; PL 95-609, Nov. 8, 1978; PL 100-418, Aug. 23, 1988

SEC. 1 [42 U.S.C. 4901 nt], Short Title.

This Act may be cited as the "Noise Control Act of 1972."

SEC. 2 [42 U.S.C. 4901] Findings and Policy.

(a) The Congress finds--

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

SEC. 3 [42 U.S.C. 4902] Definitions.

For purposes of this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "person" means an individual, corporation, partnership, or association, and (except as provided in sections 11(e) and 12(a)) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term "product" means any manufactured article of goods or component thereof; except that such term does not include--

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

(B)(i) any military weapons or equipment which are designed for combat use;

(ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or

(iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

(5) The term "new product" means

(A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or

(B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or section 8 which would have been applicable to such product had it been manufactured in the United States.

(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) the term "commerce" means trade, traffic, commerce, or transportation-

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(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term "State" includes the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United State Code) and includes the United States Postal Service.

(11) The term "environmental noise" means the intensity, duration, and the character of sounds from all sources.

SEC. 4 [42 U.S.C. 4903] Federal Programs.

(a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, in such a manner as to further the policy declared in section 2(b).

(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government--

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 3(3)(B) of this Act, may be granted from the requirements of sections 6, 17, and 18 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c)(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act) shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

SEC.5 [42 U.S.C.4904] Identification of Major Noise Sources; Noise Criteria and Control Technology.

(a)(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of the date of the enactment of this Act, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare that may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of the date of the enactment of this Act, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports

(1) identifying products (or classes of products) which in his judgment are major sources of noise, and

(2) giving information on techniques for control of noise from such products, including available data on the technology, costs and alternative methods of noise control. The first such report shall be published not later than eighteen months after the date of enactment of this Act.

(c) The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Any report (or revision thereof) under subsection

(b)(1) identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

SEC. 6 [42 U.S.C. 4905] Noise Emission Standards for Products Distributed in Commerce.

(a)(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c), for each product--

(A) which is identified (or is part of a class identified) in any report published under section 5(b)(1) as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

(i) Construction equipment.

(ii) Transportation equipment (including recreational vehicles and related equipment).

(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

(iv) Electrical or electronic equipment.

(2)(A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after the date of enactment of this Act, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 5(b)(1) on or before the date of publication of such initial proposed regulations.

(B) In case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 5(b)(1) after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the Administrator not later than eighteen months after such report is published.

(3) After proposed regulations respecting a product have published under paragraph (2), the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c), for such product--

(A) not earlier than six months after publication of such proposed regulations, and

(B) not later than--

(i) twenty-four months after the date of enactment of this Act, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

(ii) in the case of any other product, twenty-four months after the publication of the report under section 5(b)(1) identifying it (or a class of products of which it is a part) as a major source of noise.

(b) The Administrator may publish proposed regulations, meeting the requirements of subsection (c), for any product for which he is not required by subsection (a) to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c), for such product.

(c)(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 5, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources) the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle

Safety Act of 1966, the Clean Air Act, and the Federal Water Pollution Control Act. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5, United States Code.

(3) The Administrator may revise any regulation prescribe by him under this section by

(A) publication of proposed revised regulations, and

(B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

(d)(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act.

(e)(1) No State or political subdivision thereof may adopt or enforce--

(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

(2) Subject to sections 17 and 18, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

(f) At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by

(1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or

(2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.

[6(f) added by PL 95-609, Nov. 8, 1978]

SEC. 7 Aircraft Noise Standards.

(a) The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the

(1) adequacy of Federal Aviation Administration flight and operational noise controls;

(2) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phase-out of existing aircraft;

(3) implications of identifying and achieving levels of cumulative noise exposure around airports; and

(4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and Committees on Commerce and Public Works of the Senate within nine months after the date of the enactment of this Act.

(b) [Omitted]

[EDITOR'S NOTE: Section 7(b) of this Act revised Section 611 of the Federal Aviation Act, concerning control and abatement of aircraft noise.]

(c) All--

(1) standards, rules and regulations prescribed under section 611 of the Federal Aviation Act of 1958, and

(2) exemptions, granted under any provision of the Federal Aviation Act of 1958, with respect to such standards, rules, and regulations, which are in effect on the date of the enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside,

or repealed by the Administrator of the Federal Aviation Administration in the exercise of any authority vested in him, by a court of competent jurisdiction, or by operation of law.

SEC. 8 [42 U.S.C. 4907] Labeling.

(a) The Administrator shall by regulation designate any product (or class thereof)--

(1) which emits noise capable of adversely affecting the public health or welfare; or

(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

(b) For each product (or class thereof) designated under subsection (a) the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify

(1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner,

(2) the form of the notice, and

(3) the methods and units of measurement to be used. Sections 6(c)(2) shall apply to the prescribing of any regulation under this section.

(c) This section does not prevent any State or political subdivision thereof from regulating product labeling of information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.

SEC. 9 [42 U.S.C. 4908] Imports.

The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this Act with respect to new products imported or offered for importation.

SEC. 10 [42 U.S.C. 4909] Prohibited Acts.

(a) Except as otherwise provided in subsection (b), the following act or the causing thereof are prohibited: (1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 6 which is applicable to such product, except in conformity with such regulation.

(2)(A) The removal or rendering inoperative by a person, other than for purpose of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under

section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use, or

(b) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 8(b) (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 8(b), prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of an regulation prescribed under section 9 which is applicable to such product.

(6) The failure or refusal by any person to comply with any requirement of section 11(d) or 13(a) or regulations prescribed under section 13(a), 17, or 18.

(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

SEC. 11 [42 U.S.C. 4910] Enforcement.

(a)(1) Any person who willfully or knowingly violates paragraph (1), (2), (3), (5), or (6) of subsection (a) of section 10 of this Act shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (6) or subsection (a) of Section 10 of this Act shall be subject to a civil penalty not to exceed \$10,000 per day of such violation. [11(a)(1) redesignated and (2) added by PL 95-609, Nov. 8, 1978]

(b) For the purpose of this section, each day of violation of any paragraph of section 10(a) shall constitute a separate violation of that section.

(c) The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violation of section 10(a) of this Act.

(d)(1) Whenever any person is in violation of section 10(a) of this Act, The Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of the title 5 of the United States Code.

(e) The term "person," as used in this section, does not include a department, agency, or instrumentality of the United States.

SEC. 12 [42 U.S.C. 4911] Citizen Suits.

(a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf--

(1) against any person (including

(A) the United States, and

(B) any other governmental instrumental or agency to the extent permitted by the eleventh amendment to the Constitution)

who is alleged to be in violation of any noise control requirement (as defined in subsection (e)), or

(2) against--

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this Act which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced--

(1) under subsection (a)(1)--

(A) prior to sixty days after the plaintiff has given notice of the violation

(i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 611) and

(i) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right or

(2) under subsection (a)(2) prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may interview as a matter of right. In an action under this section respecting a noise control requirement under section 611 of the Federal Aviation of 1958, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) For purposes of this section, the term "noise control requirement" means paragraph (1), (2), (3), (4), or (5) of section 10(a), or a standard, rule, or regulation issued under section 17 or 18 of this Act or under section 611 of the Federal Aviation Act of 1958.

SEC. 13 [42 U.S.C. 4912] Records, Reports, and Information.

(a) Each manufacturer of a product to which regulations under section 6 or section 8 apply shall--

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act.

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b)(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this Act.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both.

SEC. 14 [42 U.S.C. 4913] Quiet Communities, Research, Public Information.

To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this Act, and to otherwise carry out the policy of this Act, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions--

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to--

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decision-making, with special emphasis on the non-auditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 6, 7, and 8 of this Act;

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation, and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to--

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of--

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of educational and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs; except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this Act to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including

direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act. [14 amended by PL 95-609, Nov. 8, 1978]

SEC. 15 [42 U.S.C. 4914] Development of Low-Noise-Emission Products.

(a) For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product that emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 6 at the time of procurement to that type of product.

(4) The term "retail price" means

(A) the maximum statutory price applicable to any type of product; or

(B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b)(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product--

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Institute of Standards and Technology, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a fulltime basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of

subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.
[15(b)(3) amended by PL 100-418,]

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulation.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reason therefore.

(c)(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission

qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, \$1,000,000 for the fiscal year ending June 30, 1973, and \$2,000,000 for each of the two succeeding fiscal years. \$2,200,000 for the fiscal year ending June 30, 1976, \$550,000 for the transition period of July 1, 1976, through September 30, 1976, and \$2,420,000 for the fiscal year ending September 30, 1977.

(h) The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of this Act.

SEC. 16 [42 U.S.C. 4915] Judicial Review; Witnesses.

(a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section 6, 17, or 18 or this Act or any labeling regulation under section 8 of this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 611 of the Federal Aviation Act of 1958 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) If a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administrator (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his

recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is

(1) likely to prevail on the merits in the review proceeding and

(2) will suffer irreparable harm pending such proceeding.

(d) For the purpose of obtaining information to carry out this Act, the administrator of the Environmental Agency may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 17 [42 U.S.C. 4916] Railroad Noise Emission Standards.

(a)(1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12 and 16 of this Act.

(c)(1) Subject to paragraph (2) but notwithstanding any other provisions of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).

SEC. 18 [42 U.S.C. 4917] Motor Carrier Noise Emission Standards.

(a)(1) Within the nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for motor carrier engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emission resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(3) Any standard of regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c)(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(A)).

SEC. 19 [42 U.S.C. 4918] Authorization of Appropriations.

There are authorized to be appropriated to carry out this Act (other than for research and development) \$15,000,000 for the fiscal year ending September 30, 1979. [19 amended by PL 94-301, May 31, 1976; revised by PL 95-609, Nov. 8, 1978]

Comprehensive Environmental Response, Compensation, and Liability Act, as amended

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as Superfund) was enacted by Congress to address growing concerns about the need to clean up uncontrolled, abandoned hazardous waste sites and to address future releases of hazardous substances into the environment. Many states have state-level Superfund laws which complement and in some cases are more stringent than federal CERCLA requirements.

The Superfund Amendments and Reauthorization Act (SARA) of 1986 revised various sections of CERCLA, extended the taxing authority for Superfund, and created a free-standing law, SARA Title III, also known as the Emergency Planning and Community Right-to-Know Act (EPCRA). Although part of the Superfund Amendments, EPCRA is a separately codified law; it is not considered part of the reauthorized CERCLA (see EPCRA section for description).

The term "Superfund" is based on the large fund of money that is collected by EPA to investigate sites and to pay for cleanups in cases where no responsible parties can be determined. (Otherwise, if responsible parties can be found, they will be held liable for cleanup costs). The chemical industry (all SIC codes) pays about \$300 million a year in Superfund chemical feedstock taxes.

Site Clean-Ups:

Under CERCLA, site clean-ups are conducted under the procedures contained in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300), typically referred to as the National Contingency Plan (NCP). The NCP includes provisions for permanent cleanups, known as remedial actions, and other cleanups referred to as "removals."

EPA generally takes remedial actions only at sites on the National Priorities List, which currently includes approximately 1300 sites, ranked according to a hazard scheme. Both EPA and states can conduct clean-ups at other sites, however, EPA provides responsible parties the opportunity to conduct removal and remedial actions and encourages community involvement throughout the Superfund response process. Responsible parties often have incentives to manage their own remedial or removal actions, rather than waiting for EPA or a state regulatory agency to conduct a clean-up.

CERCLA assigns responsibility for contamination following several criteria. First, potentially responsible parties (PRPs) can include a wide range of parties. For example, if there is contamination at a waste disposal site, PRPs can include: current owners or operators of the site, previous owners or operators at the time of the disposal activities, all facilities that provided waste for disposal at the site, and all transporters that delivered waste to the site.

Furthermore, CERCLA recognizes both "strict" and "joint and several" liability. "Strict" liability means that parties are responsible regardless of how careful they were in their practices. "Joint and several" liability means that any one PRP is potentially liable for all costs no matter how much of the total contamination is directly a result of their activities. While these standards are quite strict, they reflect the importance Congress has placed on controlling accidental releases of hazardous substance into the environment.

The general remediation process under CERCLA is specified by the National Contingency Plan and includes: 1) emergency removal to address immediate environmental problems, 2) a remedial investigation/feasibility study (RI/FS) to determine clean up approaches, 3) a Record of Decision (ROD) to document the approach EPA has selected for clean up, and 4) the design, construction, operation, and maintenance of the final cleanup.

The cleanup process is required to meet all other environmental requirements during its operation, which are referred to as "ARARs" for "applicable or relevant and appropriate requirements". For example, air emissions could only be released during the cleanup under the standards of the Clean Air Act. ARARs are also used to set cleanup levels. For example, Safe Drinking Water Act MCLs may be used to determine the level of contaminant control for groundwater being remediated.

New Releases:

With regard to new releases, the CERCLA hazardous substance release reporting regulations (40 CFR Part 302) are intended to insure an appropriate response to minimize harm to humans and the environment. CERCLA directs the person in charge of a facility to report to the National Response Center (NRC) as soon as they have knowledge of any environmental release of a listed hazardous substance which exceeds a reportable quantity. The hazardous substances and reportable quantities are defined and listed in 40 CFR §302.4. The report of such a release may trigger responses by one or more federal, state and local emergency response agencies.

Resource Conservation and Recovery Act

Purpose and Organization

In 1965, the Solid Waste Disposal Act was enacted to improve solid waste disposal methods. It was amended in 1970 by the Resource Recovery Act. In 1976 Congress again amended the Solid Waste Disposal Act to create a new program for the management of hazardous waste. The Resource Conservation and Recovery Act (RCRA) establishes a framework for national programs to achieve environmentally sound management of both hazardous and nonhazardous wastes. RCRA also promotes resource recovery techniques and methods to reduce the generation of hazardous waste. RCRA is designed to:

- Protect human health and the environment,
- Reduce/eliminate the generation of hazardous wastes, and
- Conserve energy and natural resources.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) both expanded the scope of RCRA and increased the level of detail in many of its provisions.

RCRA, as amended, contains ten subtitles. Subtitle C, "Hazardous Waste Management;" Subtitle D, "State or Regional Solid Waste Plans;" Subtitle I, "Regulation of Underground Storage Tanks;" and Subtitle J, "Demonstration Medical Waste Tracking Program," constitute the regulatory portion of the law. The other subtitles provide the legal and administrative structure for achieving the objectives of the law.

The U.S. Environmental Protection Agency (EPA), U.S. Department of Commerce (DOC), U.S. Department of Energy (DOE), and U.S. Department of the Interior (DOI) each have specific responsibilities under RCRA. EPA issues guidelines and regulations for proper management of solid and hazardous wastes, oversees and approves the development of state waste management plans, and provides financial aid to agencies and firms performing research on solid waste. DOC encourages greater commercialization of proven resource recovery technologies. DOE oversees activities involving research and development of new techniques for producing energy from wastes. DOI oversees mineral waste problems, including recovery of metals and minerals and methods for stabilizing mining wastes.

Materials Regulated under RCRA

Under RCRA no material can be a hazardous waste unless it is a solid waste. RCRA defines a solid waste as:

. . .any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial or mining and agricultural operations, and from community activities. . . [excluding] . . .solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act. . . , or source, special nuclear, or byproduct material as defined by the Atomic Energy Act [AEA] of 1954. . . [Section 1004(27)].

Several wastes important to DOE are excluded from the RCRA definition of solid wastes (40 CFR 261.2). They include source, special nuclear, or byproduct material as defined by the AEA [Section 11(e), (z), (aa)]; waste from extraction, beneficiation, and processing of ores and minerals, including overburden from mining uranium ores; utility wastes; oil and gas drilling muds and brines; and some wastes that are reused or recycled.

The statutory definition of a hazardous waste is provided in RCRA as follows:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may . . . cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or . . . pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed [Section 1004(5)].

Furthermore, a solid waste is a hazardous waste if it is not excluded by regulation (40 CFR 261.4) and if it is listed (261.30) as a hazardous waste, is a waste mixture containing one or more listed hazardous wastes, or exhibits one or more characteristics of hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity) (40 CFR 261.21 to 261.24). Listed wastes meet the definition of hazardous waste regardless of the concentration of hazardous constituents. With few exceptions [e.g., spent solvents listed solely because they are ignitable (40 CFR 261.31)], the only way to have a listed waste relieved from hazardous waste management requirements is to petition EPA or a state to delist the waste (40 CFR 260.22). When listed wastes are mixed with nonhazardous wastes or materials, the mixture must be managed as hazardous waste. Two exceptions to this approach are hazardous debris meeting Land Disposal Restriction (LDR) standards [40 CFR 261.3(f)] and residues from processing certain wastes using high temperature metals recovery processing [40 CFR 261.3(c)(2)(ii)(C)].

In contrast to listed waste, a characteristic waste remains hazardous **only** as long as it exhibits a hazardous characteristic. Therefore, a mixture of a waste exhibiting a hazardous waste characteristic and a nonhazardous solid waste is not considered hazardous waste unless the mixture exhibits a hazardous waste characteristic.

Hazardous Waste Generators

Proper identification and management of hazardous wastes are critical to the success of the "cradle-to-grave" program. Waste generators must determine (40 CFR 262.11) if their solid wastes are also hazardous wastes and, if so, notify EPA, or an authorized state if appropriate, of their hazardous waste management activities and obtain an EPA identification number (40 CFR 262.12). Generators must manage hazardous wastes in accordance with RCRA's on-site waste management requirements (40 CFR 262) or obtain a permit (40 CFR 264 or 265 and 270) for waste management activities. They must also verify that the transportation, treatment, storage, and disposal of their waste are conducted only by others with EPA identification numbers and authority to manage the waste.

Before a hazardous waste may be shipped off-site, the generator must determine:

- whether the waste is a hazardous waste (40 CFR 262.11);
- the proper packaging for the hazardous waste (40 CFR 262.30);
- the necessary RCRA and U.S. Department of Transportation (DOT) labeling, marking, and placarding requirements (40 CFR 262.30-262.33); and
- the information necessary to complete and sign the hazardous waste manifest (which includes both DOT and RCRA shipping paper information) for the waste shipment (40 CFR 262.20-262.23).

Title 40 CFR 262, Subpart B (The Manifest), addresses RCRA requirements for shipping documentation under hazardous waste manifest requirements. The manifest must include the following information (Appendix to Part 262):

- name and ID number of generator and facility to which the waste is being sent,
- DOT description of waste being transported,
- quantities of the waste being transported, and
- address of the off-site treatment, storage, and disposal facility (TSDF) designated to receive the waste.

The purpose of the manifesting system is to establish accountability for and tracking of hazardous waste shipments. The manifest is an important feature of RCRA's "cradle to grave" system. A generator must keep a copy of each manifest for three years. The generator must also maintain records and report hazardous waste management activity, including the amount of hazardous waste produced, the transporters of the wastes, and the TSDFs in possession of the hazardous waste (40 CFR 262.40-262.44).

Hazardous Waste Transporters

Title 40 CFR 263 contains regulations governing the transportation of hazardous waste. In developing its regulations, EPA adopted by reference most of DOT's Hazardous Materials Transportation Act (HMTA) implementing regulations for the safe transportation of hazardous wastes (49 CFR 171 through 179). Because RCRA regulations adopted by reference rather than incorporating the specific language of DOT's HMTA regulations, a transporter must refer both to RCRA and to DOT regulations to ensure compliance when transporting hazardous waste.

Anyone who transports a hazardous waste off-site via air, rail, highway, or water is subject to the RCRA transporter requirements. However, 40 CFR 262.20(f) exempts transport of hazardous wastes within or along the border of contiguous properties under the control of the same person, even if the contiguous properties are divided by a public or private right-of-way. Before implementation of this exemption with the military munitions rule (see 62 FR 6622, February 12, 1997), such transport of hazardous waste was subject to RCRA manifesting requirements. In addition, conditionally exempt small quantity generators are exempt in specified situations [40 CFR 262.20(e)].

Treatment, Storage, and Disposal

RCRA requires an owner or operator of a TSDF to obtain a permit to operate. Congress, recognizing that a permitting program would take time to implement, established interim status as a mechanism

by which existing hazardous waste management facilities could continue operation without first obtaining a RCRA permit. Owners and operators of such hazardous waste management facilities had to notify EPA that the facility exists and to file a preliminary (Part A) permit application. Interim status is also available to facilities that first become subject to RCRA permitting requirements because of regulatory changes, such as expansion of the list of solid wastes regulated as hazardous waste.

Section 3005(c) of HSWA established deadlines for permitting interim-status facilities. Interim-status facilities were required to either file the Part B portion of the permit application by the applicable statutory deadline or file a closure plan and close by November 8, 1992. Interim status ends when a final determination is made to grant or deny the RCRA permit or when the facility closes (for facilities that closed rather than seek a RCRA permit). Owners/operators of facilities denied a permit may appeal the decision under 40 CFR 124.19 or an equivalent state appeal processes. New facilities are ineligible for interim status and must receive a permit before construction can begin. (New facilities seeking a permit submit the Part A and Part B portions of the permit application at the same time.)

Facilities operating under interim status or permits must comply with the general requirements applicable to all types of facilities and also to waste management-unit specific requirements. General requirements include providing security (40 CFR 264.14 or 265.14), planning for emergencies (40 CFR 264 Subpart D or 265 Subpart D), training personnel (40 CFR 264.16 or 265.16), properly characterizing waste to be managed in the facility (40 CFR 264.13 or 265.13), groundwater monitoring (as appropriate) (40 CFR 264 Subpart F or 265 Subpart F), planning for eventual closure of the facility (40 CFR 264 Subpart G or 265 Subpart G), and proper recordkeeping and reporting [40 CFR 264.11 or 265.11, 264.15(d) or 265.15(d), 264.16(e) or 265.16(e), 264.56(j) or 265.56(j), 264.71 through 264.77 or 265.71 through 265.77, and 265.94]. Unit-specific design and operating criteria are codified in 40 CFR 264 or 265 Subparts I through DD and include additional unit-specific recordkeeping requirements.

Requirements for the design, operation, maintenance, and closure of hazardous waste management units are specific for each type of unit. For example, tanks must meet special tank design and operation requirements (40 CFR 264 Subpart J or 265 Subpart J). Containers used for storing hazardous wastes must satisfy requirements of 40 CFR 264 Subpart I or 265 Subpart I. In addition, unit-specific requirements that may potentially apply to DOE activities are specified for containment buildings (40 CFR 264 Subpart DD or 265 Subpart DD), waste piles (40 CFR 264 Subpart L or 265 Subpart L), incinerators (40 CFR 264 Subpart O or 265 Subpart O), surface impoundments (40 CFR 264 Subpart K or 265 Subpart K), land treatment units (40 CFR 264 Subpart M or 265 Subpart M), landfills (40 CFR 264 Subpart N or 265 Subpart N), and miscellaneous units (40 CFR 264 Subpart X) not otherwise specified in regulation, among other things.

However, certain DOE waste management units do not require a RCRA permit because their management activities are exempt from permitting. Examples of exempted activities are on-site hazardous waste accumulation for less than 90 days, totally enclosed treatment, wastewater treatment only involving tanks that discharge through surface water discharges regulated under the Clean Water Act, and elementary neutralization [40 CFR 270.1(c)(2)].

Hazardous and Solid Waste Amendments (HSWA)

HSWA addressed congressional concern about the adequacy of then existing waste management requirements in preventing uncontrolled releases of hazardous constituents or hazardous wastes from hazardous waste management units. Three of the HSWA initiatives were especially noteworthy in preventing or addressing hazardous waste/constituent releases.

First, Congress restricted land disposal of untreated hazardous waste unless it could be demonstrated that the disposal facility is adequate to prevent release of hazardous constituents from the facility as long as the waste remains hazardous (i.e., no migration demonstration) [Section 3004(d)(1)]. Congress authorized EPA to develop treatment standards to allow land disposal of treated hazardous wastes in permitted facilities that have not demonstrated compliance with no-migration requirements. The regulatory program implemented under the statutory land disposal prohibition largely focuses on establishing treatment standards that, when met, allow hazardous wastes to be disposed of in land-based units. Second, facilities were required to satisfy the minimum technology requirements (i.e., liners and leachate collection systems) for landfills and surface impoundments to prevent hazardous wastes and/or constituents from migrating into groundwater and to permit detection of releases when or if they occur [Section 3004(o)]. Third, EPA was granted the authority to require corrective action for releases of hazardous waste and hazardous constituents from any solid waste management unit, regardless of when the waste was placed in the unit, at a facility seeking a RCRA permit [Sections 3004(u) and 3004(v)].

Underground Storage Tanks

Subtitle I (implemented at 40 CFR 280) was also added by HSWA. It established a program to regulate the three to five million underground storage tanks (USTs) in the United States and to prevent their leaking. Under this subtitle RCRA regulates the storage of a product (e.g., petroleum products and hazardous substances), rather than hazardous waste. Hazardous substances regulated under Subtitle I include all the hazardous substances (except those regulated as a hazardous waste under Subtitle C of RCRA) defined under CERCLA. Hazardous substances under CERCLA Section 101(14) encompass a wide variety of pollutants regulated under other federal statutes including the Clean Water Act, Clean Air Act, and Toxic Substances Control Act. Radionuclides, which are specifically excluded under RCRA's definition of solid waste, are regulated under CERCLA because they are defined as hazardous air pollutants under the Clean Air Act. Thus, radioactive materials/waste stored in USTs are within the scope of RCRA Subtitle I authority. Although within the scope of Subtitle I, tanks containing radioactive materials/wastes subject to Atomic Energy Act requirements are currently deferred from UST regulations [40 CFR 280.10(c)(2)]. Nevertheless, tanks containing radioactive materials/waste "mixed" with hazardous waste are regulated under Subtitle C.

Federal agencies and departments, including DOE, that own or operate USTs are subject to and must comply with all applicable federal, state, interstate, and local requirements, except when the President determines that exemption of specific tanks from these requirements is in the "paramount" interest of the United States (RCRA, Section 9007).

States with RCRA Authority

Section 3006 of RCRA authorizes states to develop and enforce their own hazardous waste programs in place of the federal program administered by EPA. Before administering any of the provisions of HSWA, authorized states must again go through a state program approval process.

Federal Facility Compliance Act

The Federal Facility Compliance Act (FFCA, Pub. L. 102-386) was enacted on October 6, 1992, and among other things, specifically waived sovereign immunity with respect to RCRA for federal facilities. Therefore, EPA may impose fines and penalties on federal agencies. Please [click here](#) to see a brief summary of the FFCA.

Land Disposal Program Flexibility Act of 1996

RCRA was amended on March 26, 1996, with the passage of the Land Disposal Program Flexibility Act of 1996 (Pub. L. 104-119). Please [click here](#) for a brief summary of this statute.

Guidance on the Use of Section 7003 of RCRA

In October 1997, EPA's Office of Enforcement and Compliance Assurance issued a guidance document entitled [Guidance on the Use of Section 7003 of RCRA](#). This guidance was issued to update, expand, and supersede previous guidance on this subject, dated September 26, 1984. The guidance document states that Section 7003 of RCRA provides the Agency:

. . . with broad and effective enforcement tools that can be used to abate conditions that may present an imminent and substantial endangerment to health or the environment. Section 7003 allows EPA to address situations where the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste may present such an endangerment. In these situations, EPA can initiate judicial action or issue an administrative order to any person who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to require the person to refrain from those activities or to take any necessary action. Among its many benefits, Section 7003 provides EPA with a strong and effective means of furthering risk-based enforcement and implementing its strategy for addressing the worst RCRA sites first.

For further information and details, please utilize the link provided above to access a complete electronic version of this guidance document.

Legislative Initiatives

Current legislative issues of concern that may be addressed in future solid waste legislation include prohibition or restriction of imports of solid waste from other states, flow control (i.e., the ability of municipalities to require that a community's trash be disposed of at a specified facility), recycling, incinerator ash, reduction in the use of toxics, regulation of industrial manufacturing waste, and management of remediation wastes.

Regulations implementing RCRA are found in Title 40 of the CFR, Chapter I, Subchapter I.

Introduction

Founded in 1975, the West Virginia Nongame Wildlife & Natural Heritage Program (NWNHP) is an on-going, computer assisted ecological inventory. A part of the WV Division of Natural Resources, Wildlife Resources Section, the NWNHP follows methodologies used nationally by the Natural Heritage Network. The NWNHP maintains files on rare, threatened and endangered plants and animals, as well as unique natural communities. It is hoped that data derived from these files may be used to conserve West Virginia's outstanding biodiversity.

Before a taxon can be added or deleted from our rare species lists, a set of criteria must be met. All species that are rare on a global basis (G1, G2, G3) are tracked, as well as species that are federally listed, proposed listed or are candidates with the U.S. Fish and Wildlife Service under the Endangered Species Act. Some species are widespread globally, but are uncommon within West Virginia. Species that are at the edge of their global ranges and are in the state are generally tracked to conserve genetic diversity that often exists at the margin of a species' range. Several species are tracked because they require unique habitats, such as shale barrens, wetlands or high elevation spruce forests.

Organization of the list

This list is ordered by scientific name, and contains the following fields:

Code: The element code (or ELCODE) is a unique alpha-numeric code which is assigned to each species in our database. The codes are somewhat descriptive, and can help you determine what group of species you are dealing with. For instance, plant codes start with "P" and include "M" or "D" for monocots or dicots, and are then followed by the first three letters of the family name (in most cases).

Scientific Name: Scientific names are largely those designated by The Nature Conservancy (TNC). In general, TNC chooses one standard source for each taxonomic group within a particular geographic area. The standard source is usually a major published list or widely-used taxonomic reference.

Common Name: Common names are not standardized and may vary.

Ranking (State Rank/Global Rank/Federal Status): State Ranks are assigned by the NWNHP and are based on the species' documented occurrences and distribution within the state. Other factors, such as habitat and threats to existing populations, may effect the state rank. Species with State Ranks of S1, S2 or S3 are tracked by the NWNHP.

- S1 Five or fewer documented occurrences, or very few remaining individuals within the state. Extremely rare and critically imperiled; or because of some factor(s) making it especially vulnerable to extirpation.
- S2 Six to 20 documented occurrences, or few remaining individuals within the

state. Very rare and imperiled; or because of some factor(s) making it vulnerable to extirpation.

- S3 Twenty-one to 100 documented occurrences. May be somewhat vulnerable to extirpation.
- S4 Common and apparently secure with more than 100 occurrences.
- S5 Very common and demonstrably secure.
- SH Historical. Species which have not been relocated within the last 20 years. May be rediscovered.
- SR Reported from state, but not yet verified.
- SX Believed extirpated. Little likelihood of rediscovery.
- SU Possibly rare, but status uncertain until more data are gathered.
- S? Unranked, or, if following a number, rank uncertain (ex. S2?).

Qualifiers

- B Breeding populations
- N Non-breeding populations
- A Accidental or adventive

Global Ranks are determined by a consensus of the Natural Heritage Network botanists and The Nature Conservancy. Global ranks are based on the range-wide status of a species or variety. These ranks are used by various agencies as a way to assess species rarity. The number of documented occurrences, number of individuals and factors threatening the species are taken into consideration when assigning a global rank.

- G1 Five or fewer documented occurrences, or very few remaining individuals globally. Extremely rare and critically imperiled; or because of some factor(s) making it especially vulnerable to extirpation.
- G2 Six to 20 documented occurrences, or few remaining individuals globally. Very rare and imperiled; or because of some factor(s) making it vulnerable to extirpation.
- G3 Twenty-one to 100 documented occurrences. Either very rare and local

throughout its range or found locally in a restricted range; vulnerable to extinction.

- G4 Common and apparently secure globally, though it may be rare in parts of its range, especially at the periphery.
- G5 Very common and demonstrably secure, though it may be rare in parts of its range, especially at the periphery.
- GH Historical. May be rediscovered.
- GX Believed extirpated. Little likelihood of rediscovery.
- GU Possibly rare, but status uncertain until more data are gathered.
- G? Unranked, or, if following a number, rank uncertain (ex. G2?).
- G#Q Species of questionable taxonomy (ex. G4Q).
- G#T# Signifies the rank of a variety or subspecies. For example, G5T2 would apply to a species that is secure globally (G5), but the subspecies has a rank of T2, imperiled.

Federal Status is determined by the U.S. Fish and Wildlife Service. These species are protected by the Endangered Species Act of 1973, as amended.

- LE Listed Endangered. A species is threatened with extinction throughout all or a significant portion of its range.
- LT Listed Threatened. A species is likely to become endangered in the foreseeable future.
- PE Proposed Endangered. A species is proposed for listing as endangered.
- PT Proposed Threatened. A species is proposed for listing as threatened.
- C1 Candidate, Category 1. There is enough available information to propose the species for listing, but it is set aside because of other proposals of higher priority. If the species is at immediate risk, the U.S. Fish and Wildlife Service may initiate an emergency listing.
- 3A A species for which there is evidence of extinction.
- 3B A species name which is not valid under current taxonomic understanding.

Due to changes in global and state rarity, this list is dynamic. This list will change as new information becomes available.

We welcome your questions, comments and suggestions. Feel free to contact us at the following address: Nongame Wildlife & Natural Heritage Program, P.O. Box 67, Elkins, WV 26241; 304/637-0245; bsargent@dnr.state.wv.us.

It is the policy of the Division of Natural Resources to provide its facilities, services, programs and employment opportunities to all persons without regard to sex, race, age, religion, national origin or ancestry, disability or other protected group status.

WEST VIRGINIA NONGAME WILDLIFE AND NATURAL HERITAGE PROGRAM
RARE SPECIES LIST
JUNE 2000

- PLANTS -

CODE	SCIENTIFIC NAME	COMMON NAME	RANKING	
PGPIN01020	ABIES BALSAMEA	BALSAM FIR	S3	G5
PDRAN01080	ACONITUM RECLINATUM	WHITE MONKSHOOD	S3	G3
PDSCR01130	AGALINIS AURICULATA	EARLEAF FOXGLOVE	SH	G3
PDASTBX0C1	AGERATINA AROMATICA VAR AROMATICA	LESSER SNAKEROOT	S1	G4G5T?
PDROS03050	AGRIMONIA MICROCARPA	SMALL-FRUITED AGRIMONY	S1	G5
PMPOA040T0	AGROSTIS MERTENSII	ARCTIC BENTGRASS	S1	G5
PMALI01050	ALISMA TRIVIALE	NORTHERN WATER PLANTAIN	SH	G5
PMLIL022N0	ALLIUM OXYPHILUM	NODDING ONION	S2	G2Q
PDROS05030	AMELANCHIER BARTRAMIANA	OBLONG-FRUITED SERVICEBERRY	S1	G5
PDFAB08040	AMORPHA FRUTICOSA	FALSE INDIGO-BUSH	S1	G5
PDVIT01010	AMPELOPSIS ARBOREA	PEPPERVINE	SH	G5
PDVIT01030	AMPELOPSIS CORDATA	HEARTLEAF PEPPERVINE	S1	G5
PDERI02011	ANDROMEDA POLIFOLIA VAR GLAUCOPHYLLA	BOG ROSEMARY	S1	G5T5
PDRAN04020	ANEMONE CANADENSIS	CANADA ANEMONE	S1	G5
PDBRA060U4	ARABIS HIRSUTA VAR PYCNOCARPA	HAIRY ROCK-CRESS	S2	G5T5
PDBRA061D0	ARABIS PATENS	SPREADING ROCKCRESS	S2	G3
PDBRA06320	ARABIS SEROTINA	SHALE BARREN ROCKCRESS	S2	G2 LE
PDBRA061W0	ARABIS SHORTII	SHORT'S ROCK-CRESS	S1S2	G5
PMPOA0K0V0	ARISTIDA PURPURASCENS	PURPLE NEEDLEGRASS	S1	G5
PMPOA0P010	ARUNDINARIA GIGANTEA	GIANT CANE	S2	G5
PDASC02270	ASCLEPIAS VIRIDIS	GREEN MILKWEED	SH	G4G5
PPASP021F0	ASPLENIUM SEPTENTRIONALE	NORTHERN SPLEENWORT	S2	G4G5
PDAST0T0C0	ASTER BOREALIS	BOREAL ASTER	SH	G5
PDAST0T217	ASTER NOVI-BELGII VAR ELODES	LONG-LEAVED ASTER	SH	G5T?
PDAST0T21B	ASTER NOVI-BELGII VAR TARDIFLORUS	NORTHEASTERN ASTER	SH	G5T?
PDAST0T320	ASTER SOLIDAGINEUS	NARROWLEAF ASTER	S1	G5
PDFAB0F2Y0	ASTRAGALUS DISTORTUS	BENT MILK-VETCH	S2	G5
PDFAB0F5U0	ASTRAGALUS NEGLECTUS	COOPER'S MILKVETCH	S1	G4
PDFAB0G030	BAPTISIA AUSTRALIS	WILD FALSE INDIGO	S2	G5
PDBER02010	BERBERIS CANADENSIS	AMERICAN BARBERRY	S1	G3
PDBET020C0	BETULA PAPYRIFERA	PAPER BIRCH	S2	G5
PPOPH01071	BOTRYCHIUM LANCEOLATUM VAR ANGUSTISEGMENTUM	LANCE-LEAF GRAPE-FERN	SH	G5T4
PPOPH010A0	BOTRYCHIUM MATRICARIIFOLIUM	CHAMOMILE GRAPE-FERN	S2	G5
PPOPH010C0	BOTRYCHIUM ONEIDENSE	BLUNT-LOBE GRAPE-FERN	S1	G4Q
PMPOA10060	BOUTELOUA CURTIPENDULA	SIDE-OATS GRAMA	S3	G5
PMPOA170Z2	CALAMAGROSTIS PORTERI SSP PORTERI	PORTER'S REEDGRASS	S2	G4T4
PMPOA17172	CALAMAGROSTIS STRICTA SSP STRICTA	NORTHERN REEDGRASS	S1	G5T5
PMORC0C042	CALOPOGON TUBEROSUS VAR TUBEROSUS	GRASS PINK	S1	G5T5
PDCLC01010	CALYCANTHUS FLORIDUS	SWEET-SHRUB	SH	G5
PDCON040G1	CALYSTEGIA SPITHAMAEA SSP PURSHIANA	SHALE BARREN BINDWEED	S3	G4G5T4
PDCAM020T0	CAMPANULA ROTUNDIFOLIA	AMERICAN HAREBELL	S2	G5
PDBRA0K0E0	CARDAMINE FLAGELLIFERA	BITTER CRESS	S1S2	G3
PMCYP03090	CAREX AESTIVALIS	SUMMER SEDGE	S2	G4
PMCYP030A0	CAREX AGGREGATA	GLOMERATE SEDGE	SH	G5
PMCYP030K0	CAREX ALOPECOIDEA	FOXTAIL SEDGE	SH	G5
PMCYP03160	CAREX ATHERODES	AWNED SEDGE	S1	G5
PMCYP03182	CAREX ATLANTICA SSP CAPILLACEA	HOWE SEDGE	SH	G5T5?
PMCYP03260	CAREX BROMOIDES	BROME-LIKE SEDGE	S2	G5
PMCYP032B0	CAREX BUXBAUMII	BROWN BOG SEDGE	S2	G5
PMCYP032F0	CAREX CANESCENS	HOARY SEDGE	S3	G5
PMCYP032J0	CAREX CAREYANA	CAREY'S SEDGE	S1	G5
PMCYP032Y0	CAREX COMOSA	BEARDED SEDGE	S2	G5
PMCYP03340	CAREX CONOIDEA	FIELD SEDGE	S1	G5
PMCYP033G0	CAREX DAVISII	DAVIS' SEDGE	SH	G4
PMCYP03420	CAREX EBURNEA	EBONY SEDGE	S3	G5
PMCYP034B0	CAREX EMORYI	EMORY'S SEDGE	S1	G5
PMCYP036W0	CAREX LACUSTRIS	LAKE SEDGE	S2	G5
PMCYP03720	CAREX LASIOCARPA	SLENDER SEDGE	S1	G5
PMCYP037F0	CAREX LEPTONERVIA	FINELY-NERVED SEDGE	S1	G4
PMCYP03870	CAREX MEADII	MEAD'S SEDGE	SH	G4G5
PMCYP038F0	CAREX MESOCHOREA	MIDLAND SEDGE	SH	G4G5
PMCYP038T0	CAREX MOLESTA	TROUBLESOME SEDGE	S1	G4

PMCYP039B0	CAREX NIGROMARGINATA	BLACK-EDGE SEDGE	S2	G5
PMCYP039C0	CAREX NORMALIS	LARGER STRAW SEDGE	S2	G5
PMCYP03A50	CAREX PAUCIFLORA	FEW-FLOWERED SEDGE	S1	G5
PMCYP03AA0	CAREX PEDUNCULATA	LONGSTALK SEDGE	S1	G5
PMCYP03710	CAREX PELLITA	WOOLY SEDGE	S1	G5
PMCYP03AW0	CAREX POLYMORPHA	VARIABLE SEDGE	S1	G3
PMCYP03AZ0	CAREX PRAIREA	PRAIRIE SEDGE	S1	G5?
PMCYP03B50	CAREX PROJECTA	NECKLACE SEDGE	S1	G5
PMCYP03D40	CAREX STYLOFLEXA	BENT SEDGE	S1	G4G5
PMCYP03D70	CAREX SUBERECTA	PRAIRIE STRAW SEDGE	S1	G4
PMCYP03DN0	CAREX TETANICA	RIGID SEDGE	S1	G4G5
PMCYP03DY0	CAREX TRICHOCARPA	HAIRY-FRUIT SEDGE	S1	G4
PMCYP03E40	CAREX TYPHINA	CAT-TAIL SEDGE	S2	G5
PMCYP03EV0	CAREX WOODII	PRETTY SEDGE	S1	G4
PDRHA040K0	CEANOTHUS HERBACEUS	PRAIRIE REDROOT	S1	G5
PDEUP0D2H0	CHAMAESYCE VERMICULATA	WORM SEEDED SPURGE	S1	G5
PPADI09070	CHEILANTHES EATONII	CHESTNUT LIPFERN	S2	G5?
PPADI090P0	CHEILANTHES TOMENTOSA	WOOLY LIPFERN	S1	G5
PDCHE091E0	CHENOPODIUM STANDLEYANUM	STANDLEY GOOSEFOOT	SH	G5
PMORC0G030	CLEISTES BIFARIA	SPREADING POGONIA	S1	G3G4
PDRAN08020	CLEMATIS ALBICOMA	WHITE-HAIRED LEATHERFLOWER	S3	G4
PDRAN080J3	CLEMATIS OCCIDENTALIS	PURPLE CLEMATIS	S2	G5T5
	VAR OCCIDENTALIS			
PMORC0K011	COELOGLOSSUM VIRIDE VAR VIRESCENS	LONG-BRACT GREEN ORCHIS	S1	G5T5
PMCOM03050	COMMELINA ERECTA	SLENDER DAYFLOWER	S2	G5
PDRAN0A041	COPTIS TRIFOLIA SSP GROENLANDICA	GOLDTHREAD	S2	G5T5
PMORC0M070	CORALLORHIZA BENTLEYI	BENTLEY'S CORALROOT	S1	G1?
PMORC0M050	CORALLORHIZA TRIFIDA	EARLY CORALROOT	S1	G5
PMORC0M060	CORALLORHIZA WISTERIANA	SPRING CORALROOT	S1	G5
PDAST2L0R3	COREOPSIS PUBESCENS VAR ROBUSTA	STAR TICKSEED	S2	G5?T3?
PDAST2L0X0	COREOPSIS VERTICILLATA	WHORLED COREOPSIS	S1	G5
PDCOR010B0	CORNUS RUGOSA	ROUNDLEAF DOGWOOD	S1	G5
PDEUP0H0G0	CROTON GLANDULOSUS	NORTHERN CROTON	SH	G5
PPADI0B020	CRYPTOGRAMMA STELLERI	FRAGILE ROCKBRAKE	S1	G5
PDCUS010W0	CUSCUTA INDECORA	PRETTY DODDER	S1	G5
PDCUS01180	CUSCUTA ROSTRATA	BEAKED DODDER	S2	G4
PMCYP062Y0	CYPERUS REFRACTUS	REFLEXED FLATSEDGE	S2	G5
PMCYP064B0	CYPERUS SQUARROSUS	AWNED CYPERUS	S2	G5
PMORC0Q0D0	CYPRIPEDIUM REGINAE	SHOWY LADY'S-SLIPPER	S1	G4
PDROS0K010	DALIBARDA REPENS	STAR VIOLET	S3	G5
PDSCR0L010	DASISTOMA MACROPHYLLA	MULLEIN FOXGLOVE	SH	G4
PDLTY03010	DECODON VERTICILLATUS	HAIRY SWAMP LOOSESTRIFE	S1	G5
PDRAN0B0J0	DELPHINIUM EXALTATUM	TALL LARKSPUR	S2	G3
PDBRA0X030	DESCURAINIA PINNATA	TANSY-MUSTARD	SH	G5
PDFAB1D0T0	DESMODIUM LINEATUM	TICK-TREFOIL	SH	G5
PDFAB1D120	DESMODIUM PAUCIFLORUM	FEWFLOWER TICK-TREFOIL	S1	G5
PMPOA24021	DICHANTHELIUM ACUMINATUM	A PANIC GRASS	SH	G5T5
	VAR ACUMINATUM			
PMPOA24030	DICHANTHELIUM BOREALE	NORTHERN WITCHGRASS	S1	G5
PMPOA24120	DICHANTHELIUM MERIDIONALE	MATTING WITCHGRASS	SH	G5
PMPOA240U2	DICHANTHELIUM SABULORUM VAR THINUM	AMERICAN PANIC GRASS	SH	G5T5
PMPOA240Y0	DICHANTHELIUM XANTHOPHYSUM	SLENDER PANIC GRASS	SH	G5
PMPOA270C0	DIGITARIA FILIFORMIS	SLENDER CRABGRASS	SH	G5
PMLIL0R030	DISPORUM MACULATUM	NODDING MANDARIN	S1	G3G4
PDDRO02070	DROSEROTA ROTUNDIFOLIA	ROUNDLEAF SUNDEW	S3	G5
PMCYP09220	ELEOCHARIS COMPRESSA	FLAT-STEMMED SPIKERUSH	S2	G4
PMCYP090M0	ELEOCHARIS ENGELMANNII	ENGELMANN SPIKERUSH	SH	G4?
PMCYP090V0	ELEOCHARIS INTERMEDIA	MATTED SPIKERUSH	S1	G5
PMCYP091E0	ELEOCHARIS PALUSTRIS	CREEPING SPIKERUSH	S1	G5
PMCYP091P0	ELEOCHARIS ROSTELLATA	BEAKED SPIKERUSH	S1	G5
PMHYD03080	ELODEA NUTTALLII	NUTTALL WATERWEED	S1	G5
PMPOA2H0Q3	ELYMUS TRACHYCAULUS	SLENDER WHEATGRASS	S1	G5T5
	SSP TRACHYCAULUS			
PDRAN0G010	ENEMION BITERNATUM	FALSE RUE-ANEMONE	S1	G5
PPEQU01020	EQUISETUM FLUVIATILE	WATER HORSETAIL	S2	G5
PPEQU01090	EQUISETUM SYLVATICUM	WOODLAND HORSETAIL	S1	G5
PMPOA2K0Q0	ERAGROSTIS HIRSUTA	BIG-TOP LOVEGRASS	SH	G5
PDPGN08050	ERIOGONUM ALLENII	YELLOW BUCKWHEAT	S2	G4
PDBRA16050	ERYSIMUM CAPITATUM	PRAIRIE ROCKET	S1	G5
PDAST3P230	EUPATORIUM PILOSUM	VERVAIN THOROUGHWORT	SH	G5
PDEUP0Q2Q0	EUPHORBIA PUBENTISSIMA	FLOWERING SPURGE	SH	G5
PDEUP0Q1T0	EUPHORBIA PURPUREA	GLADE SPURGE	S2	G3

PMCYP0B010	FIMBRISTYLIS ANNUA	ANNUAL FIMBRY	S1	G5	
PDOLE040F0	FRAXINUS QUADRANGULATA	BLUE ASH	S1	G5	
PDFAB1P0P0	GALACTIA VOLUBILIS	DOWNY MILKPEA	S1	G5	
PDERI0G020	GAYLUSSACIA BRACHYCERA	BOX HUCKLEBERRY	S2	G2G3	
PDERI0G030	GAYLUSSACIA DUMOSA	DWARF HUCKLEBERRY	S1	G5	
PDGEN06060	GENTIANA AUSTROMONTANA	APPALACHIAN GENTIAN	S1	G3	
PDGEN06020	GENTIANA FLAVIDA	YELLOW GENTIAN	SH	G4	
PDROS0S010	GEUM ALEPPICUM	YELLOW AVENS	S1	G5	
PDROS0S0D0	GEUM RIVALE	PURPLE AVENS	S1	G5	
PMPOA2Y010	GLYCERIA ACUTIFLORA	SHARP-SCALED MANNA-GRASS	S2	G5	
PMPOA2Y080	GLYCERIA GRANDIS	AMERICAN MANNA-GRASS	S2	G5	
PMPOA2Y0M0	GLYCERIA LAXA	NORTHERN MANNA-GRASS	S1	G5	
PPDRY0D010	GYMNOCARPIUM APPALACHIANUM	APPALACHIAN OAK FERN	S1	G3	
PMPOA2Z010	GYMNOPOGON AMBIGUUS	BROADLEAF BEARDGRASS	SH	G4	
PDCIS02030	HELIANTHEMUM CANADENSE	CANADA FROSTWEED	S2	G5	
PDCIS020C0	HELIANTHEMUM PROPINQUUM	FROSTWEED	S1	G4	
PDAST4N0T0	HELIANTHUS LAEVIGATUS	SMOOTH SUNFLOWER	S2	G4	
PDAST4N0X0	HELIANTHUS MOLLIS	ASHY SUNFLOWER	SH	G4G5	
PDAST4N113	HELIANTHUS OCCIDENTALIS SSP OCCIDENTALIS	MCDOWELL SUNFLOWER	S2	G5T5	
PMPON03040	HETERANTHERA RENIFORMIS	KIDNEYLEAF MUD-PLANTAIN	S1	G5	
PDSAX0E190	HEUCHERA ALBA	WHITE-FLOWERED ALUMROOT	S2	G2Q	
PDSAX0E032	HEUCHERA AMERICANA VAR HISPIDA	ROUGH ALUMROOT	S2	G5T3?	
PDSAX0E0L0	HEUCHERA LONGIFLORA	LONG-FLOWERED ALUMROOT	S2	G4	
PMORC1C040	HEXALECTRIS SPICATA	CRESTED CORALROOT	S1	G5	
PDMAL0H0N0	HIBISCUS LAEVIS	HALBERD-LEAVED MALLOW	S2	G5	
PMPOA35040	HIEROCHLOE ODORATA	HOLY GRASS	S1	G5	
PDPRI06010	HOTTONIA INFLATA	FEATHERFOIL	S1	G4	
PDCIS03030	HUDSONIA TOMENTOSA	FALSE HEATHER	S1	G5	
PPLYC02080	HUPERZIA POROPHILA	ROCK CLUBMOSS	S1	G4	
PDAP16070	HYDROCOTYLE RANUNCULOIDES	FLOATING PENNYWORT	S2	G5	
PDCLU030F0	HYPERICUM DENTICULATUM	COPPERY ST. JOHN'S-WORT	S1	G5	
PDCLU030K0	HYPERICUM DRUMMONDII	DRUMMOND ST. JOHN'S-WORT	SH	G5	
PDAQU01080	ILEX COLLINA	LONG-STALKED HOLLY	S3	G3	
PMORC1F010	ISOTRIA MEDEOLOIDES	SMALL WHORLED POGONIA	S1	G2G3	LT
PDJUG02030	JUGLANS CINEREA	BUTTERNUT	S3	G3G4	
PMJUN01090	JUNCUS ARTICULATUS	JOINTED RUSH	S2	G5	
PMJUN010A0	JUNCUS BALTICUS	BALTIC RUSH	S2	G5	
PMJUN01380	JUNCUS BIFLORUS	GRASS-LEAVED RUSH	S1	G5	
PMJUN010D0	JUNCUS BRACHYCARPUS	SHORT-FRUIT RUSH	SH	G4G5	
PMJUN010X0	JUNCUS DICHOTOMUS	FORKED RUSH	S1	G5	
PMJUN01150	JUNCUS FILIFORMIS	THREAD RUSH	S2	G5	
PMJUN012J0	JUNCUS SCIRPOIDES	SCIRPUS-LIKE RUSH	S2	G5	
PMJUN012V0	JUNCUS TORREYI	TORREY'S RUSH	S1	G5	
PMJUN012X0	JUNCUS TRIFIDUS	HIGHLAND RUSH	S1	G5	
PGPIN02020	LARIX LARICINA	AMERICAN LARCH	S1	G5	
PDCIS04092	LECHEA PULCHELLA VAR PULCHELLA	PINWEED	SH	G5T4	
PDCIS040E0	LECHEA TENUIFOLIA	SLENDER PINWEED	S1	G5	
PMLEM01080	LEMNA VALDIVIANA	PALE DUCKWEED	S1	G5	
PDERI0P060	LEUCOTHOE RECURVA	RECURVED FETTERBUSH	S1	G4G5	
PDAST5X0Q1	LIATRIS SCARIOSA VAR NIEUWLANDII	NORTHERN BLAZING STAR	S1	G5?TU	
PDAST5X0Y0	LIATRIS TURGIDA	APPALACHIAN BLAZING STAR	S1	G3	
PMLIL1A0E0	LILIUM MICHAUXII	CAROLINA LILY	S1	G4G5	
PDSCR12041	LINDERNIA DUBIA VAR ANAGALLIDEA	FALSE PIMPERNEL	SH	G5T4	
PDCPR02012	LINNAEA BOREALIS SSP LONGIFLORA	TWINFLOWER	S1	G5T?	
PDLIN020G4	LINUM LEWISII VAR LEWISII	PRAIRIE FLAX	S2	G4G5T?	
PDLIN020V0	LINUM SULCATUM	GROOVED YELLOW FLAX	SH	G5	
PMORC1M040	LIPARIS LOESELII	LOESEL'S TWAYBLADE	S2	G5	
PMORC1N061	LISTERA CORDATA VAR CORDATA	HEARTLEAF TWAYBLADE	S2	G5T?	
PMORC1N080	LISTERA SMALLII	KIDNEY-LEAF TWAYBLADE	S2	G4	
PDCAM0E0W0	LOBELIA KALMII	KALM'S LOBELIA	S1	G5	
PDCPR03040	LONICERA CANADENSIS	AMERICAN FLY-HONEYSUCKLE	S2	G5	
PDONA0B0B0	LUDWIGIA LEPTOCARPA	RIVER SEEDBOX	S2	G5	
PDONA0B0M0	LUDWIGIA POLYCARPA	MANY-FRUIT FALSE-LOOSESTRIFE	S1	G4	
PDFAB2B340	LUPINUS PERENNIS	SUNDIAL LUPINE	S1	G5	
PMJUN02040	LUZULA BULBOSA	SOUTHERN WOODRUSH	S1	G5	
PPSCH02030	LYGODIUM PALMATUM	CLIMBING FERN	SH	G4	
PDPRI070A0	LYSIMACHIA HYBRIDA	LOWLAND LOOSESTRIFE	S1	G5	
PDPRI070M0	LYSIMACHIA QUADRIFLORA	FOUR-FLOWERED LOOSESTRIFE	S1	G5?	
PDPRI070S0	LYSIMACHIA THYRSIFLORA	WATER LOOSESTRIFE	S1	G5	
PDPRI070T0	LYSIMACHIA TONSA	SOUTHERN LOOSESTRIFE	SH	G4	
PDLYT09010	LYTHRUM ALATUM	WINGED-LOOSESTRIFE	S2	G5	

PMLIL1D040	MAIANthemum stellatum	STARFLOWER FALSE SOLOMON'S-SEAL	S1	G5	
PMORC1R0N0	MALAXIS BAYARDII	ADDER'S MOUTH	S1	G2?	
PMAGA07050	MANFREDA VIRGINICA	FALSE ALOE	S1	G5	
PDAST68030	MARSHALLIA GRANDIFLORA	BARBARA'S-BUTTONS	S2	G2	
PPDRY0K010	MATTEUCCIA STRUTHIOPTERIS	OSTRICH FERN	S2	G5	
PMPOA3X0C0	MELICA MUTICA	TWO-FLOWER MELIC GRASS	S2	G5	
PMPOA3X0D0	MELICA NITENS	THREE-FLOWER MELIC GRASS	S1	G5	
PDMNY02010	MENYANTHES TRIFOLIATA	BUCKBEAN	S1	G5	
PDCAR0G0E0	MINUARTIA GROENLANDICA	MOUNTAIN SANDWORT	S1	G5	
PDLAM17078	MONARDA FISTULOSA VAR BREVIS	SMOKE HOLE BERGAMOT	S1	G5T1	
PDMON04020	MONOTROPIS ODORATA	SWEET PINESAP	SH	G3	
PMPOA480B0	MUHLENBERGIA CAPILLARIS	LONG-AWN HAIRGRASS	SH	G5	
PDBOR0P090	MYOSOTIS MACROSPERMA	LARGE-SEEDED FORGET-ME-NOT	S1	G5	
PDHAL040H0	MYRIOPHYLLUM SIBIRICUM	COMMON WATER-MILFOIL	S1	G5	
PMNAJ01030	NAJAS GRACILLIMA	SLENDER WATER NYMPH	S2	G5?	
PDSCR2P010	NUTTALLANTHUS CANADENSIS	OLD-FIELD TOADFLAX	S1	G4G5	
PDONA0C020	OENOTHERA ARGILLICOLA	SHALE BARREN	S3	G4	
		EVENING-PRIMROSE			
PDONA0C110	OENOTHERA PILOSELLA	EVENING-PRIMROSE	S2	G5	
PPOPH02040	OPHIOGLOSSUM ENGELMANNII	LIMESTONE ADDER'S-TONGUE	S1	G5	
PMPOA4J010	ORYZOPSIS ASPERIFOLIA	WHITE-GRAINED	S1	G5	
		MOUNTAIN-RICEGRASS			
PMPOA4J030	ORYZOPSIS CANADENSIS	CANADA MOUNTAIN-RICEGRASS	S1	G5	
PMPOA4J0A0	ORYZOPSIS RACEMOSA	BLACK-FRUIT	S2	G5	
		MOUNTAIN-RICEGRASS			
PMPOA4K0S0	PANICUM FLEXILE	WIRY WITCH GRASS	SH	G5	
PMPOA4K2C0	PANICUM VERRUCOSUM	WARTY PANIC GRASS	S1	G4	
PDSAX0P010	PARNASSIA ASARIFOLIA	KIDNEYLEAF	S2	G4	
		GRASS-OF-PARNASSUS			
PDSAX0P060	PARNASSIA GRANDIFOLIA	LARGELEAF	S1	G3G4	
		GRASS-OF-PARNASSUS			
PDCAR0L020	PARONYCHIA ARGYROCOMA	SILVER NAIL-WORT	S3	G4	
PDCAR0L0S3	PARONYCHIA VIRGINICA VAR VIRGINICA	YELLOW NAIL-WORT	S1	G4T1Q	
PMPOA4P190	PASPALUM PUBIFLORUM	HAIRY-SEED PASPALUM	SH	G5	
PDCEL0A010	PAXISTIMA CANBYI	CANBY'S MOUNTAIN-LOVER	S2	G2	
PDSCR1K0M0	PEDICULARIS LANCEOLATA	SWAMP LOUSEWORT	S2	G5	
PPADI0H065	PELLAEA GLABELLA SSP GLABELLA	SMOOTH CLIFFBRAKE	S2	G5T?	
PMARA0E010	PELTANDRA VIRGINICA	ARROW-ARUM	S2	G5	
PDPLM0D0C0	PHLOX BUCKLEYI	SWORDLEAF PHLOX	S2	G2	
PDERI10010	PIERIS FLORIBUNDA	MOUNTAIN FETTER-BUSH	S2	G4	
PGPIN040X0	PINUS RESINOSA	RED PINE	S1	G5	
PMPOA4X040	PIPTOCHAETIUM AVENACEUM	BLACKSEED NEEDLEGRASS	S1	G5	
NBHEP2M0P0	PLAGIOCHILA SULLIVANTII	A MOSS	SH	G2	
PMORC1Y0M0	PLATANThERA PSYCODES	SMALL PURPLE-FRIDGE ORCHIS	S1	G5	
PMPOA4Z1W0	POA PALUDIGENA	BOG BLUEGRASS	S1	G3	
PMPOA4Z270	POA SALTUENSIS	DROOPING BLUEGRASS	SH	G5	
PMORC21010	POGONIA OPHIOGLOSSOIDES	ROSE POGONIA	S2	G5	
PDPLM0E0L0	POLEMONIUM VANBRUNTIAE	JACOB'S LADDER	S2	G3	
PDPGL020E0	POLYGALA CRUCIATA	CROSSLEAF MILKWORT	S1	G5	
PDPGL020F0	POLYGALA CURTISSII	CURTISS MILKWORT	S2	G5	
PDPGN0L040	POLYGONUM AMPHIBIUM	WATER SMARTWEED	S1	G5	
PMPON05010	PONTEDERIA CORDATA	PICKEREL WEED	S1	G5	
PDSAL01030	POPULUS BALSAMIFERA	BALSAM POPLAR	SH	G5	
PMPOT030G0	POTAMOGETON ILLINOENSIS	ILLINOIS PONDWEED	SH	G5	
PMPOT030W0	POTAMOGETON PULCHER	SPOTTED PONDWEED	S1	G5	
PMPOT030X3	POTAMOGETON PUSILLUS	SLENDER PONDWEED	SH	G5T5	
	VAR TENUISSIMUS				
PMPOT03100	POTAMOGETON SPIRILLUS	SPIRAL PONDWEED	SH	G5	
PMPOT03130	POTAMOGETON TENNESSEENSIS	TENNESSEE PONDWEED	S1	G2	
PMPOT03160	POTAMOGETON ZOSTERIFORMIS	FLATSTEM PONDWEED	SH	G5	
PDAST7K080	PRENANTHES CREPIDINEA	NODDING RATTLESNAKE-ROOT	SH	G3G4	
PDROS1C010	PRUNUS ALLEGHANIENSIS	ALLEGHANY PLUM	S3	G4	
PDROS1C040	PRUNUS ANGUSTIFOLIA	CHICKASAW PLUM	S1	G5	
PDROS1C160	PRUNUS PUMILA	SAND CHERRY	S1	G5	
PDAP11Y040	PTILIMNIUM NODOSUM	HARPERELLA	S1	G2	LE
PDLAM1N030	PYCNANTHEMUM CLINOPODIOIDES	BASIL MOUNTAIN-MINT	SH	G2	
PDLAM1N072	PYCNANTHEMUM INCANUM VAR PUBERULUM	HOARY MOUNTAIN-MINT	S1	G5T4?	
PDLAM1N0K0	PYCNANTHEMUM LOOMISII	LOOMIS' MOUNTAIN-MINT	S1	G4?	
PDLAM1N090	PYCNANTHEMUM MONTANUM	SINGLE-HAIRED MOUNTAIN-MINT	SH	G3G5	
PDLAM1N0A0	PYCNANTHEMUM MUTICUM	BLUNT MOUNTAIN-MINT	S1	G5	
PDLAM1N0G0	PYCNANTHEMUM TORREI	TORREY'S MOUNTAIN-MINT	S1	G2	

PDFAG05200	QUERCUS SHUMARDII	SHUMARD OAK	S1	G5	
PDRAN0L1M0	RANUNCULUS MACOUNII	MACOUN BUTTERCUP	SH	G5	
PDRAN0L230	RANUNCULUS PENSYLVANICUS	BRISTLY CROWFOOT	S1	G5	
PDRAN0L270	RANUNCULUS PUSILLUS	LOW SPEARWORT	S1	G5	
PDRAN0L2G0	RANUNCULUS SCELERATUS	CURSED CROWFOOT	SH	G5	
PDRAN0L2R0	RANUNCULUS TRICHOPHYLLUS	CREEPING BUTTERCUP	SH	G5	
PDRHA0C010	RHAMNUS ALNIFOLIA	ALDER-LEAVED BUCKTHORN	S1	G5	
PDRHA0C090	RHAMNUS LANCEOLATA	LANCE-LEAVED BUCKTHORN	S1	G5	
PDMLS0H050	RHEXIA MARIANA	MARYLAND MEADOW BEAUTY	S1	G5	
PDERI150U0	RHODODENDRON VISCOSUM	SWAMP AZALEA	S1	G5	
PMCYP0N0W0	RHYNCHOSPORA GLOBULARIS	GLOBE BEAKED-RUSH	S2	G5	
PDGRO020L0	RIBES HIRTELLUM	SMOOTH GOOSEBERRY	SH	G5	
PDGRO020T0	RIBES LACUSTRE	BRISTLY BLACK CURRANT	S1	G5	
PDGRO02120	RIBES MISSOURIENSE	MISSOURI GOOSEBERRY	SH	G5	
PDGRO021K0	RIBES TRISTE	SWAMP RED CURRANT	SH	G5	
PDROS1J010	ROSA ACICULARIS	PRICKLY ROSE	S1	G5	
PDROS1J030	ROSA BLANDA	SMOOTH ROSE	S2	G5	
PDAST85040	RUDBECKIA FULGIDA	ORANGE CONEFLOWER	SH	G5	
PMALI04041	SAGITTARIA CALYCINA VAR CALYCINA	LONG-LOBE ARROWHEAD	SH	G5T5?	
PMALI040N0	SAGITTARIA RIGIDA	SESSILE-FRUITED ARROWHEAD	S1	G5	
PDSAL020V0	SALIX DISCOLOR	GLAUCOUS WILLOW	S2	G5	
PDSAL021R0	SALIX LUCIDA	SHINING WILLOW	S1	G5	
PDPRI09051	SAMOLUS VALERANDI SSP PARVIFLORUS	WATER PIMPERNEL	SH	G5T5	
PDSAX0U090	SAXIFRAGA CAREYANA	CAREY'S SAXIFRAGE	S3	G3	
PDSAX0U0A0	SAXIFRAGA CAROLINIANA	CAROLINA SAXIFRAGE	S1	G2	
PDSAX0U0Z0	SAXIFRAGA MICHAUXII	MICHAUX SAXIFRAGE	S1	G4G5	
PDSAX0U1D0	SAXIFRAGA PENSYLVANICA	SWAMP SAXIFRAGE	S2	G5	
PMSCH02011	SCHEUCHZERIA PALUSTRIS SSP AMERICANA	POD GRASS	SH	G5T5	
PMPOA5C010	SCHIZACHNE PURPURASCENS	FALSE MELIC	S1	G5	
PMCYP0Q010	SCIRPUS ACUTUS	HARD-STEMMED BULRUSH	S2	G5	
PMCYP0Q030	SCIRPUS ANCISTROCHAETUS	NORTHEASTERN BULRUSH	S1	G3	LE
PMCYP0Q040	SCIRPUS ATROCINCTUS	BLACK-GIRDLE BULRUSH	S3	G5	
PMCYP0Q100	SCIRPUS MICROCARPUS	SMALL-FRUIT BULRUSH	S3	G5	
PMCYP0Q190	SCIRPUS PURSHIANUS	WEAKSTALK BULRUSH	S2	G4G5	
PMCYP0Q1L0	SCIRPUS VERECUNDUS	BASHFUL BULRUSH	S1	G4G5	
PMCYP0R0F0	SCLERIA OLIGANTHA	A NUTRUSH	S1	G5	
PMCYP0R0G0	SCLERIA PAUCIFLORA	NUTRUSH	S1	G5	
PMCYP0R0R0	SCLERIA TRIGLOMERATA	WHIP NUTRUSH	S2	G5	
PDLAM1U0J0	SCUTELLARIA GALERICULATA	HOODED SKULLCAP	S1	G5	
PDLAM1U105	SCUTELLARIA OVATA SSP PSEUDOARGUTA	HEART-LEAF SKULLCAP	SH	G5THQ	
PDLAM1U150	SCUTELLARIA SAXATILIS	ROCK SKULLCAP	S1	G3G4	
PDAST8H050	SENECIO ANTENNARIIFOLIUS	PUSSYTOES RAGWORT	S3	G4	
PDAST8H2E0	SENECIO PAUPERCULUS	BALSAM SQUAW-WEED	S1	G5	
PDAST8H2F0	SENECIO PLATTENSIS	PRAIRIE RAGWORT	S1	G5	
PDROS20010	SIBBALDIOPSIS TRIDENTATA	THREE-TOOTHED CINQUEFOIL	S2	G5	
PDMAL100C0	SIDA HERMAPHRODITA	VIRGINIA MALLOW	S2	G2	
PDCAR0U120	SILENE NIVEA	SNOWY CAMPION	S1	G4?	
PDCAR0U1J0	SILENE ROTUNDIFOLIA	ROUNDLEAF CATCHFLY	S1	G4	
PDCAR0U222	SILENE VIRGINICA VAR ROBUSTA	ROBUST FIRE PINK	S1	G5T1Q	
PDAST8L050	SILPHIUM COMPOSITUM	ROSEWEED	S1	G5	
PDAST8L0A1	SILPHIUM PERFOLIATUM VAR CONNATUM	VIRGINIA CUP-PLANT	S1	G5T3?	
PDAST8P034	SOLIDAGO ARGUTA VAR HARRISII	SHALE BARREN GOLDENROD	S3	G5T4	
PDAST8P190	SOLIDAGO PATULA	ROUNDLEAF GOLDENROD	SH	G5	
PDAST8P2U4	SOLIDAGO SIMPLEX SSP RANDII VAR RACEMOSA	STICKY GOLDEN-ROD	SH	G5T4?	
PDAST8P2U5	SOLIDAGO SIMPLEX VAR RANDII	MOUNTAIN GOLDENROD	SH	G5T4	
PMSPA01020	SPARGANIUM ANDROCLADUM	BRANCHING BUR-REED	S1	G4G5	
PDROS1Q0E0	SPIRAEA VIRGINIANA	VIRGINIA SPIRAEA	S1	G2	LT
PMORC2B0J0	SPIRANTHES LUCIDA	SHINING LADIES'-TRESSES	SU	G5	
PMORC2B0Y0	SPIRANTHES TUBEROSA	LITTLE LADIES'-TRESSES	S2	G5	
PMORC2B0Z0	SPIRANTHES VERNALIS	TWISTED LADIES'-TRESSES	S1	G5	
PMPOA5V050	SPOROBOLUS CLANDESTINUS	ROUGH DROPSEED	S1	G5	
PDLAM1X0P0	STACHYS NUTTALLII	NUTTALL'S HEDGE-NETTLE	S1	G5?	
PDLAM1X0Z3	STACHYS TENUIFOLIA VAR TENUIFOLIA	SMOOTH HEDGE-NETTLE	S2	G5T4Q	
PDCAR0X171	STELLARIA BOREALIS SSP BOREALIS	NORTHERN STITCHWORT	S1	G5T?	
PDCPR05020	SYMPHORICARPOS ALBUS	SNOWBERRY	S1	G5	
PDLAM1Z010	SYNANDRA HISPIDULA	GUYANDOTTE BEAUTY	S2	G4	
PDASTDX010	SYNOSMA SUAVEOLENS	SWEET-SCENTED INDIAN-PLANTAIN	S2	G3G4	
PDAP126020	TAKENIA MONTANA	MOUNTAIN PIMPERNEL	S3	G4	
PDPOR080K0	TALINUM TERETIFOLIUM	ROUNDLEAF FAMEFLOWER	S1	G4	
PDRAN0M030	THALICTRUM CLAVATUM	MOUNTAIN MEADOW-RUE	S1	G4	
PPTHE051L0	THELYPTERIS SIMULATA	BOG FERN	S1	G4G5	

PGCUP06010	THUJA OCCIDENTALIS	WHITE CEDAR	S2	G5	
PMLIL1Y030	TOFIELDIA GLUTINOSA	STICKY FALSE-ASPHEDEL	S1	G5	
PMPOA61031	TORREYCHLOA PALLIDA VAR FERNALDII	MANNA-GRASS	S2	G5?T4Q	
PMPOA61032	TORREYCHLOA PALLIDA VAR PALLIDA	PALE MANNA-GRASS	S2	G5?T?	
NBMUS7L010	TORTULA AMMONSIANA	AMMONS' TORTULA	S1	G2?	
PDANA0B050	TOXICODENDRON VERNIX	POISON SUMAC	S2	G5	
PDCLU06020	TRIADENUM TUBULOSUM	LARGE MARSH ST. JOHN'S-WORT	S1	G4?	
PPHYM02040	TRICHOMANES BOSCHIANUM	FILMY FERN	S1	G4	
PDLAM220D0	TRICHOSTEMA SETACEUM	NARROW-LEAVED BLUE-CURLS	S1	G5	
PDFAB40250	TRIFOLIUM STOLONIFERUM	RUNNING BUFFALO CLOVER	S2	G3	LE
PDFAB402D0	TRIFOLIUM VIRGINICUM	KATES MOUNTAIN CLOVER	S3	G3	
PMLIL20040	TRILLIUM CERNUUM	NODDING TRILLIUM	S1	G5	
PMLIL200B0	TRILLIUM FLEXIPES	DROOPING TRILLIUM	S1	G5	
PMLIL200L0	TRILLIUM NIVALE	SNOW TRILLIUM	S2	G4	
PMLIL200Q0	TRILLIUM PUSILLUM	LEAST TRILLIUM	S1	G3	
PMORC2F050	TRIPHORA TRIANTHOPHORA	NODDING POGONIA	S2	G4	
PDLNT02070	UTRICULARIA GEMINISCAPA	HIDDEN-FRUITED BLADDERWORT	S1	G4G5	
PDLNT02080	UTRICULARIA GIBBA	HUMPED BLADDERWORT	S1	G5	
PDLNT020C0	UTRICULARIA MACRORHIZA	GREATER BLADDERWORT	S1	G5	
PDERI180J0	VACCINIUM MACROCARPON	LARGE CRANBERRY	S2	G4	
PDERI180R0	VACCINIUM OXYCOCCOS	SMALL CRANBERRY	S2	G5	
PDVAL040B0	VALERIANELLA RADIATA	BEAKED CORN-SALAD	S2	G5	
PDAST9S0C0	VERNONIA GLAUCA	BROAD-LEAF IRONWEED	SH	G5	
PDSCR200U0	VERONICA SCUTELLATA	MARSH SPEEDWELL	S1	G5	
PDCPR070G1	VIBURNUM OPULUS VAR AMERICANUM	HIGHBUSH CRANBERRY	S1	G5T5	
PDCPR070K0	VIBURNUM RAFINESQUIANUM	DOWNY ARROW-WOOD	S2	G5	
PDVIO04030	VIOLA APPALACHIENSIS	APPALACHIAN BLUE VIOLET	S2	G3	
PDVIO042U2	VIOLA BLANDA VAR PALUSTRIFORMIS	LARGE-LEAF WHITE VIOLET	SH	G4G5T4T5	
PDVIO04170	VIOLA NEPHROPHYLLA	NORTHERN BOG VIOLET	SH	G5	
PDVIO04230	VIOLA SEPTENTRIONALIS	NORTHERN BLUE VIOLET	S1	G5	
PDVIO042D0	VIOLA TRIPARTITA	THREE-PARTED VIOLET	SH	G5	
PDVIT040H0	VITIS ROTUNDIFOLIA	MUSCADINE GRAPE	SH	G5	
PDVIT040J0	VITIS RUPESTRIS	SAND GRAPE	S1	G3G4	
PPVIT04060	VITTARIA APPALACHIANA	APPALACHIAN GAMETOPHYTE	S1	G4	
PMLEM03030	WOLFFIA COLUMBIANA	COLUMBIA WATER-MEAL	SH	G5	
PPDRY0U050	WOODSIA ILVENSIS	RUSTY WOODSIA	S2	G5	
PPDRY0U0B0	WOODSIA SCOPULINA	ALLEGHENY CLIFF FERN	S2	G5	
PPBLE05010	WOODWARDIA AREOLATA	NETTED CHAINFERN	S1	G5	
PMLIL26010	XEROPHYLLUM ASPHODELOIDES	EASTERN TURKEYBEARD	S1	G4	
PMXYR010N0	XYRIS TORTA	YELLOW-EYED GRASS	S2	G5	
PMZAN03010	ZANNICHELLIA PALUSTRIS	HORNED PONDWEED	S1	G5	
PMLIL28032	ZIGADENUS ELEGANS SSP GLAUCUS	WHITE CAMAS	S1	G5T4T5	
PMLIL28080	ZIGADENUS LEIMANTHOIDES	OCEANORUS	S2	G4Q	

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**WEST VIRGINIA NONGAME WILDLIFE AND NATURAL HERITAGE PROGRAM
RARE SPECIES LIST
JUNE 2000**

- INVERTEBRATES -

<u>CODE</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>RANKING</u>	
IMBIV01020	ACTINONAIAS LIGAMENTINA	MUCKET	S3	G5
IIO014110	AESHNA MUTATA	SPATTERDOCK DARNER	SR	G3G4
IMBIV02040	ALASMIDONTA MARGINATA	ELKTOE	S2	G4
IMBIV02090	ALASMIDONTA UNDULATA	TRIANGLE FLOATER	S1	G4
IMBIV02100	ALASMIDONTA VARICOSA	BROOK FLOATER	S2	G3
IIPLE01070	ALLOCAPNIA FRUMI	A STONEFLY	S2	G2
IIPLE11030	ALLOPERLA ARACOMA	A STONEFLY	S1	G3
IIPLE11050	ALLOPERLA BISERRATA	A STONEFLY	S1	G3
IMBIV03020	AMBLEMA PLICATA	THREERIDGE	S3	G5
IMBIV04130	ANODONTA SUBORBICULATA	FLAT FLOATER	S1	G5
IMBIV05010	ANODONTOIDES FERUSSACIANUS	CYLINDRICAL PAPERSHELL	S2	G5
ILARA26010	ANTHROBIA MONMOUTHIA	SPIDER	S2	G3G4
IILEYM1010	APLECTOIDES CONDITA	A NOCTUID MOTH	S1	G4
ILARA29010	APOCHTHONIUS PAUCISPINOSUS	DRY FORK VALLEY CAVE PSEUDOSCORPION	S1	G1
IICLL04X20	ARRHOPALITES SP 2	A COLLEMBOLA	S1	G1
IICLL04X30	ARRHOPALITES SP 3	A COLLEMBOLA	S1	G1
IILEP79010	ATRYTONOPSIS HIANNA	DUSTED SKIPPER	S1	G4G5
IILEP14010	AUTOCHTON CELLUS	GOLDEN-BANDED SKIPPER	S1S2	G4
ILARA46010	BATHYPHANTES WEYERI	A CAVE SPIDER	S1	G3G4
IICOL88010	BATRIASYMMODES PARKI	AN ANTLOVING BEETLE	SH	G1G2
IILEPJ7031	BOLORIA SELENE MYRINA	MYRINA FRITILLARY	S3	G5T5
IILEYG6010	BRACHIONYCHA BOREALIS	BOREAL FAN MOTH	S1	G4
ICMAL01250	CAECIDOTEA CANNULA	AN ISOPOD	S1	G3
ICMAL01020	CAECIDOTEA FRANZI	FRANZ'S CAVE ISOPOD	S1	G2G3
ICMAL01030	CAECIDOTEA HOLSSINGERI	GREENBRIER VALLEY CAVE ISOPOD	S3	G3
ICMAL01010	CAECIDOTEA PRICEI	PRICE'S CAVE ISOPOD	S1	G3G4
ICMAL01260	CAECIDOTEA SIMONINI	AN ISOPOD	S1	G1
ICMAL01270	CAECIDOTEA SINUNCUS	AN ISOPOD	S1	G1
IILEPH2020	CALEPHELIS BOREALIS	NORTHERN METALMARK	S2	G3G4
IILEPE2220	CALLOPHRYS IRUS	FROSTED ELFIN	S1	G3
IILEPE2210	CALLOPHRYS POLIOS	HOARY ELFIN	SH	G5
ICMAL07130	CAMBARUS CHASMODACTYLUS	NEW RIVER CRAYFISH	S3	G4
ICMAL07870	CAMBARUS ELKENSIS	ELK RIVER CRAYFISH	S1	G2
ICMAL07290	CAMBARUS LONGULUS	A CRAYFISH	S1	G5
ICMAL07650	CAMBARUS MONONGALENSIS	A CRAYFISH	S3	G5
ICMAL07250	CAMBARUS NERTERIUS	AN UNDERGROUND CRAYFISH	S1	G2G3
ICMAL07830	CAMBARUS VETERANUS	A CRAYFISH	S1	G3G4
IMGAS07010	CARYCHIUM CLAPPI	APPALACHIAN THORN	S1	G4G5
IILEY89A40	CATOCALA DULCIOLA	SWEET UNDERWING	SU	G3
IILEY89821	CATOCALA HERODIAS GERHARDI	HERODIAS UNDERWING	SU	G3T3
IILEYFM010	CHAETAGLAEA CERATA	A NOCTUID MOTH	S1	G3G4
ILARA31010	CHITRELLA REGINA	ROYAL SYARINID PSEUDOSCORPION	S1	G1
IILEPJ9150	CHLOSYPNE HARRISII	HARRIS'S CHECKERSPOT	S2	G4
IICOL02070	CICINDELA ANCOCISCONENSIS	A TIGER BEETLE	S3	G3
IICOL026A0	CICINDELA CUPRASCENS	A TIGER BEETLE	S1	G5
IICOL02640	CICINDELA CURSITANS	A TIGER BEETLE	S1	G5
IICOL02041	CICINDELA FORMOSA GENEROSA	A TIGER BEETLE	S1	G5T5
IICOL02100	CICINDELA HIRTICOLLIS	BEACH-DUNE TIGER BEETLE	S1	G5
IICOL02060	CICINDELA MARGINIPENNIS	COBBLESTONE TIGER BEETLE	S1	G2G3
IICOL02230	CICINDELA PATRUELA	A TIGER BEETLE	S2S3	G3
IICOL02280	CICINDELA PURPUREA	A TIGER BEETLE	S3	G5
IICOL02290	CICINDELA SCUTELLARIS	A TIGER BEETLE	S1	G5
IICOL02320	CICINDELA SPLENDIDA	A TIGER BEETLE	S1	G5
IICOL02310	CICINDELA UNIPUNCTATA	A TIGER BEETLE	S3	G4
IILEPA8142	COLIAS INTERIOR POP 1	PINK-EDGED SULPHUR (HIGH ELEV. POPL.)	S1	G5T1T2Q
ITUNI04030	CONOTYLA VISTA	A CAVE MILLIPEDE	SU	G1G2
ICMAL06X20	CRANGONYX SP 2	AN AMPHIPOD	SU	G2
IMBIV09010	CYCLONAIAS TUBERCULATA	PURPLE WARTYBACK	S1	G5
IILEPN1040	CYLOPSIS GEMMA	GEMMED SATYR	S2S3	G5
IMBIV10020	CYPROGENIA STEGARIA	FANSHELL	S1	G1
IIPLE2E020	DIPLOPERLA KANAWHOLENSIS	LITTLE KANAWHA PERLODID STONEFLY	S1	G3
IICOL03010	DRYOBIOUS SEXNOTATUS	SIX-BANDED LONGHORN BEETLE	S1	G7
IILEY1G010	EILEMA BICOLOR	BICOLOR MOTH	S1	G5
IMBIV13010	ELLIPSARIA LINEOLATA	BUTTERFLY	S2	G4
IMBIV14060	ELLIPTIO COMPLANATA	EASTERN ELLIPTIO	S2	G5
IMBIV14080	ELLIPTIO CRASSIDENS	ELEPHANT-EAR	S2	G5

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IMBIV14100	ELLIPTIO DILATATA	SPIKE	S2	G5	
IMBIV14120	ELLIPTIO FISHERIANA	NORTHERN LANCE	S1	G4	
IIEPH12020	EPHEMERA TRIPLEX	WEST VIRGINIA BURROWING MAYFLY	SH	GHQ	
IMBIV16184	EPIOBLASMA TORULOSA RANGIANA	NORTHERN RIFFLESHELL	S1	G2T2	LE
IMBIV16183	EPIOBLASMA TORULOSA TORULOSA	TUBERCLED BLOSSOM	SX	G2TX	LE
IMBIV16190	EPIOBLASMA TRIQUETRA	SNUFFBOX	S2	G3	
IILEPF3010	ERORA LAETA	EARLY HAIRSTREAK	S2	G4	
IILEP37140	ERYNNIS LUCILIUS	COLUMBINE DUSKYWING	S2	G4	
IILEP37100	ERYNNIS MARTIALIS	MOTTLED DUSKYWING	S3	G3G4	
IILEU2F050	EUCHLAENA EFFECTA	A LOOPER MOTH	S1	G5	
IILEU2F150	EUCHLAENA MILNEI	A LOOPER MOTH	S2	G2G4	
IILEPA5040	EUCHLOE OLYMPIA	OLYMPIA MARBLE	S2S3	G4G5	
IILEP77090	EUPHYES BIMACULA	TWO-SPOTTED SKIPPER	S1	G4	
ICMAL15120	FALLICAMBARUS FODIENS	A CRAYFISH	S1	G5	
IILEPE9012	FIXSENIA FAVONIUS ONTARIO	NORTHERN HAIRSTREAK	S1S2	G4T4	
IMGASG5X10	FONTIGENS SP 1	MCCLUNG CAVESNAIL	S1	G1	
IMGASG5060	FONTIGENS TARTAREA	ORGAN CAVESNAIL	S2	G2	
IMGASG5070	FONTIGENS TURRITELLA	GREENBRIER CAVESNAIL	S1	G1	
IMBIV17060	FUSCONAIA EBENA	EBONY SHELL	S1	G4G5	
IMBIV17070	FUSCONAIA FLAVA	WABASH PIGTOE	S3	G5	
IMBIV17120	FUSCONAIA SUBROTUNDA	LONG-SOLID	S3	G3	
IPTUR09010	GEOCENTROPHORA CAVERNICOLA	CAVE FLATWORM	SH	G3G4	
IMGAS73160	GLYPHYALINIA RADERI	MARYLAND GLYPH SNAIL	S2	G2	
IIODO08410	GOMPHUS ABBREVIATUS	SPINE-CROWNED CLUBTAIL	S1	G3G4	
IIODO08380	GOMPHUS QUADRICOLOR	RAPIDS CLUBTAIL	S2	G3G4	
IIODO08460	GOMPHUS VIRIDIFRONS	GREEN-FACED CLUBTAIL	S3	G3	
IILEYJ4010	HADENA ECTYPA	A NOCTUID MOTH	S1	G3G4	
IIPLE1S010	HANSONOPERLA APPALACHIA	HANSON'S APPALACHIAN STONEFLY	S2	G3	
IIPLE1S030	HANSONOPERLA HOKOLESQUA	A STONEFLY	S1	G2	
IAOLI05010	HAPLOTAXIS BRINKHURSTI	AN OLIGOCHAETE	SU	G1G2	
IMGAS50200	HELICODISCUS TRIODUS	TALLUS COIL	S1	G2	
IMGAS03010	HENDERSONIA OCCULTA	CHERRYSTONE DROP	S1S2	G4	
IILEP65100	HESPERIA METEA	COBWEEB SKIPPER	S2S3	G4G5	
IICOL74010	HOROLOGION SPEOKITES	ARBUCKLE CAVE GROUND BEETLE	SH	GH	
ILARA27X10	ISLANDIANA SP 1	A SPIDER	S1	G1	
ILARA27010	ISLANDIANA SPEOPHILA	CAVERN SHEET-WEB SPIDER	S1	G1	
ILARA30010	KLEPTOCHTHONIUS HENROTI	GREENBRIER VALLEY CAVE PSEUDOSCORPION	S1	G1G2	
ILARA30020	KLEPTOCHTHONIUS HETRICKI	ORGAN CAVE PSEUDOSCORPION	S1	G1	
ILARA30030	KLEPTOCHTHONIUS ORPHEUS	ORPHEUS CAVE PSEUDOSCORPION	S1	G1	
ILARA30040	KLEPTOCHTHONIUS PROSERPINA	PROSERPINA CAVE PSEUDOSCORPION	S1	G1	
IMBIV21110	LAMPSILIS ABRUPTA	PINK MUCKET	S1	G2	LE
IMBIV21250	LAMPSILIS CARDIUM	PLAIN POCKETBOOK	S2	G5	
IMBIV21050	LAMPSILIS CARIOSA	YELLOW LAMP MUSSEL	S1	G3G4	
IMBIV21070	LAMPSILIS FASCIOLA	WAVY-RAYED LAMP MUSSEL	S2	G4	
IMBIV21130	LAMPSILIS OVATA	POCKETBOOK	S1	G5	
IMBIV21280	LAMPSILIS SILIQUOIDEA	FATMUCKET	S3	G5	
IMBIV21241	LAMPSILIS TERES TERES	YELLOW SANDSHELL	S1	G5T1Q	
IMBIV22010	LASMIGONA COMPLANATA	WHITE HEELSPLITTER	S2	G5	
IMBIV22020	LASMIGONA COMPRESSA	CREEK HEELSPLITTER	S1	G5	
IMBIV22030	LASMIGONA COSTATA	FLUTED-SHELL	S3	G5	
IMBIV22060	LASMIGONA SUBVIRIDIS	GREEN FLOATER	S2	G3	
IMBIV24010	LEPTODEA FRAGILIS	FRAGILE PAPERSHELL	S2	G5	
IMGASK5170	LEPTOXIS DILATATA	SEEP MUDALIA	SU	G2?	
IMBIV26020	LIGUMIA RECTA	BLACK SANDSHELL	S2	G5	
IILEYFE100	LITHOPHANE ORIUNDA	A NOCTUID MOTH	S1	G4	
IITHS01070	LITOCAMPA FIELDINGI	DIPLURA	S2	G2G3	
IITHS01060	LITOCAMPA SP 1	DIPLURA	S1	G1	
IILEY2V090	LOPHOCAMPA MACULATA	SPOTTED TUSsock MOTH	S1	G5	
IILEPC1110	LYCAENA EPIXANTHE	BOG COPPER	S1	G4G5	
IILEPC1070	LYCAENA HYLLUS	BRONZE COPPER	S2	G5	
IPTUR05020	MACROCOTYLA HOFFMASTERI	HOFFMASTER'S CAVE FLATWORM	S3	G2G3	
IICOLA0A010	MEGACEPHALA VIRGINICA	VIRGINIA BIG-HEADED TIGER BEETLE	S3	G5	
IIPLE0G020	MEGALEUCTRA FLINTI	A STONEFLY	S1	G2	
IMBIV29020	MEGALONAIAS NERVOSA	WASHBOARD	S1	G5	
IILEYJ0040	MELANCHRA ASSIMILIS	A MOTH	S1	G5	
IILEYAR030	MEROLONCHE DOLLI	DOLL'S MEROLONCHE	S1	G3G4	
IILEYLZ020	METALEPSIS SALICARUM	A MOTH	S1	G5	
ILARA36010	NESTICUS TENNESSEENSIS	A CAVE SPIDER	SU	G2G4	
IMBIV30010	OBLIQUARIA REFLEXA	THREEHORN WARTYBACK	S3	G5	
IMBIV31050	OBOVARIA SUBROTUNDA	ROUND HICKORYNUT	S3	G4	
IIODO12210	OPHIOMOMPHUS ALLEGHANIENSIS	ALLEGHANY SNAKETAIL	S2	G2Q	
ICMAL11480	ORCONECTES LIMOSUS	SPINYCHEEK CRAYFISH	S1	G4G5	

IIPLE0M020	OSTROCERCA COMPLEXA	A STONEFLY	S1	G4	
IIPLE0M050	OSTROCERCA PROLONGATA	A STONEFLY	S1	G3	
IMGAS78100	PARAVITREA CERES	SIDELONG SUPERCOIL	S1	G7	
IMGAS78250	PARAVITREA REESI	ROUND SUPERCOIL	S1	G3	
IMGAS78270	PARAVITREA SERADENS	BARRER SUPERCOIL	S1	G3	
IILEPF1010	PARRHASIUS MALBUM	WHITE-M HAIRSTREAK	S2	G5	
IPTUR01020	PHAGOCATA ANGUSTA	A CAVE PLANARIAN	SU	G1G2	
ILARA28010	PHANETTA SUBTERRANEA	A SPIDER	S3	G4	
IILEPK3040	PHYCIODES BATESII	TAWNY CRESCENT	SH	G4	
IILEPK3100	PHYCIODES COCYTA	NORTHERN CRESCENT	S2	G5	
IMBIV34030	PLETHOBASUS CYPHYUS	SHEEPNOSE	S1	G3	
IMBIV35060	PLEUROBEMA CLAVA	CLUBSHELL	S1	G2	LE
IMBIV35080	PLEUROBEMA COLLINA	JAMES SPINYMUSSEL	S1	G1	LE
IMBIV35090	PLEUROBEMA CORDATUM	OHIO PIGTOE	S2	G3	
IMBIV35070	PLEUROBEMA SINTOXIA	ROUND PIGTOE	S2	G4	
ILACA02030	POECILOPHYSIS WOLMSDORFENSIS	A CAVE MITE	SU	G3	
IILEPK5042	POLYGONIA FAUNUS SMYTHI	GREEN COMMA	S1	G5T3T4	
ILARA21010	PORHOMMA CAVERNICOLA	APPALACHIAN CAVE SPIDER	S2	G4G5	
IMBIV37010	POTAMILUS ALATUS	PINK HEELSPLITTER	S3	G5	
IMBIV37070	POTAMILUS OHIENSIS	PINK PAPERSHELL	S1	G5	
IICOL4E040	PSEUDANOPHTHALMUS FUSCUS	A CAVE BEETLE	S2	G2G3	
IICOL4E022	PSEUDANOPHTHALMUS GRANDIS ELEVATUS	A CAVE BEETLE	S1	G3T2	
IICOL4E021	PSEUDANOPHTHALMUS GRANDIS GRANDIS	A CAVE BEETLE	S1	G3T3	
IICOL4E023	PSEUDANOPHTHALMUS GRANDIS ORTHOSULCATUS	A CAVE BEETLE	S1	G3T1	
IICOL4E024	PSEUDANOPHTHALMUS GRANDIS SSP 1	A CAVE BEETLE	S1	G3T?	
IICOL4E050	PSEUDANOPHTHALMUS HADENOECUS	TIMBER RIDGE CAVE BEETLE	S1	G1	
IICOL4E060	PSEUDANOPHTHALMUS HIGGINBOTHAMI	A CAVE BEETLE	S2	G2G3	
IICOL4E030	PSEUDANOPHTHALMUS HYPERTRICHOSIS	A CAVE BEETLE	S3	G3	
IICOL4E010	PSEUDANOPHTHALMUS LALLEMANTI	LALLEMANT'S CAVE BEETLE	S1	G1	
IICOL4E080	PSEUDANOPHTHALMUS MONTANUS	DRY FORK VALLEY CAVE BEETLE	S1	G1	
IICOL4E091	PSEUDANOPHTHALMUS POTOMACA POTOMACA	SOUTH BRANCH VALLEY CAVE BEETLE	S1	G2T2	
IICOL4E092	PSEUDANOPHTHALMUS POTOMACA SENECAE	SENECA CAVE BEETLE	S1	G2T1	
IICOL4EX10	PSEUDANOPHTHALMUS SP 1	A BEETLE	S1	G1	
IICOL4EX20	PSEUDANOPHTHALMUS SP 2	A BEETLE	S1	G1	
IICOL4EX30	PSEUDANOPHTHALMUS SP 3	A BEETLE	S1	G1	
IICOL4E100	PSEUDANOPHTHALMUS SUBAEQUALIS	GREENBRIER VALLEY CAVE BEETLE	S1	G1	
IICLL01050	PSEUDOSINELLA CERTA	GANDY CREEK CAVE SPRINGTAIL	S1	G1	
IICLL01020	PSEUDOSINELLA GISINI	A SPRINGTAIL	S3	G3	
IICLL01030	PSEUDOSINELLA ORBA	A CAVE SPRINGTAIL	S1	G3G4	
IICLL01X10	PSEUDOSINELLA SP 1	A SPRINGTAIL	S1	G1	
IICLL01040	PSEUDOSINELLA TESTA	SHELLED CAVE SPRINGTAIL	S1	G1G2	
ITUNI03040	PSEUDOTREMIA FULGIDA	GREENBRIER VALLEY CAVE MILLIPEDE	S2	G2G3	
ITUNI03050	PSEUDOTREMIA LUSCIOSA	GERMANY VALLEY CAVE MILLIPEDE	S1	G1	
ITUNI03060	PSEUDOTREMIA PRINCEPS	SOUTH BRANCH VALLEY CAVE MILLIPEDE	S1	G1	
ITUNI03X10	PSEUDOTREMIA SP 1	GENERAL DAVIS CAVE MILLIPEDE	S1	G1?	
IIPLE2V030	PTERONARCYS COMSTOCKI	A STONEFLY	S2	G3	
IMBIV38010	PTYCHOBANCHUS FASCIOLARIS	KIDNEYSHELL	S3	G4G5	
IMBIV54030	PYGANODON GRANDIS	GIANT FLOATER	S3	G5	
IILEP38090	PYRGUS WYANDOT	GRIZZLED SKIPPER	S1	G2	
IMBIV39080	QUADRULA METANEVRA	MONKEYFACE	S1	G4	
IMBIV39110	QUADRULA PUSTULOSA	PIMPLEBACK	S3	G5	
IMBIV39120	QUADRULA QUADRULA	MAPLELEAF	S2	G5	
ILACA03010	RHAGIDIA VARIA	A CAVE MITE	SU	G3	
IILEPD4080	SATYRIUM CARYAEVORUM	HICKORY HAIRSTREAK	S2	G4	
IILEPD4060	SATYRIUM EDWARDSII	EDWARDS' HAIRSTREAK	S2	G4	
IMBIV41010	SIMPSONIAIIS AMBIGUA	SALAMANDER MUSSEL	S1	G3	
IICLL05020	SINELLA AGNA	A SPRINGTAIL	S1	G2G3	
IIODO32100	SOMATOCHLORA GEORGIANA	COPPERY EMERALD	S1	G3G4	
IMGASJ2210	SOMATOGYRUS PENNSYLVANICUS	SHALE PEBBLESNAIL	SU	G3	
IILEPJ6110	SPEYERIA ATLANTIS	ATLANTIS FRITILLARY	S3	G5	
IILEPJ6010	SPEYERIA DIANA	DIANA	S2S3	G3	
IILEPJ6040	SPEYERIA IDALIA	REGAL FRITILLARY	S1	G3	
IPTUR04060	SPHALLOPLANA CULVERI	CULVER'S PLANARIAN	S1	G1	
IILEP25030	STAPHYLUS HAYHURSTII	HAYHURST'S SCALLOPWING	S1	G5	
IMBIV42030	STROPHITUS UNDULATUS	SQUAWFOOT	S3	G5	
ICMAL05060	STYGOBROMUS ALLEGHENIENSIS	ALLEGHENY CAVE AMPHIPOD	S1	G4	
ICMAL05010	STYGOBROMUS BIGGERSI	BIGGERS' CAVE AMPHIPOD	S1	G2G4	
ICMAL05420	STYGOBROMUS COOPERI	COOPER'S CAVE AMPHIPOD	S1	G1	
ICMAL05670	STYGOBROMUS CULVERI	CULVER'S CAVE AMPHIPOD	S1	G1G2	
ICMAL05070	STYGOBROMUS EMARGINATUS	GREENBRIER CAVE AMPHIPOD	S3	G3	
ICMAL05050	STYGOBROMUS FRANZI	FRANZ'S CAVE AMPHIPOD	SU	G2G3	
ICMAL05020	STYGOBROMUS GRACILIPES	SHENANDOAH VALLEY CAVE AMPHIPOD	S1	G2G4	
ICMAL05120	STYGOBROMUS MORRISONI	MORRISON'S CAVE AMPHIPOD	S1	G2G3	

ICMAL05660	STYGOBROMUS NANUS	POCAHONTAS CAVE AMPHIPOD	S1	G1	
ICMAL05560	STYGOBROMUS PARVUS	MINUTE CAVE AMPHIPOD	S1	G1G2	
ICMAL05700	STYGOBROMUS POLLOSTUS	AN AMPHIPOD	S1	G2G3	
ICMAL05650	STYGOBROMUS REDACTUS	AN AMPHIPOD	S1	G1	
ICMAL05X10	STYGOBROMUS SP 1	AN AMPHIPOD	S1S2	G2	
ICMAL05X20	STYGOBROMUS SP 2	COBURN CAVE AMPHIPOD	S1	G1	
ICMAL05X30	STYGOBROMUS SP 3	DYERS CAVE AMPHIPOD	S1	G1	
ICMAL05340	STYGOBROMUS SPINATUS	SPRING CAVE AMPHIPOD	S3	G3	
ICMAL05042	STYGOBROMUS TENUIS POTOMACUS	POTOMAC GROUNDWATER AMPHIPOD	S1	G4T3T4Q	
IAOLI04010	STYLODRILUS BEATTIEI	AN OLIGOCHAETE	S1	G2G3	
IIODO80050	STYLURUS NOTATUS	ELUSIVE CLUBTAIL	SH	G3	
IIPLE19200	SWELTSIA POCAHONTAS	A STONEFLY	S2	G2	
IILEY8T180	SYNGRAPHA RECTANGULA	SALT AND PEPPER LOOPER MOTH	S1	G5	
IMBIV43050	TOXOLASMA PARVUS	LILLIPUT	S2	G5	
IAOLI03010	TRICHODRILUS CULVERI	AN OLIGOCHAETE	S1	G1G2	
ITUNI05010	TRICHOPETALUM KREKELERI	WEST VIRGINIA BLIND CAVE MILLIPEDE	S1	G1	
ITUNI05020	TRICHOPETALUM PACKARDI	PACKARD'S BLIND CAVE MILLEPEDE	S2	G3Q	
ITUNI05030	TRICHOPETALUM WEYERIENSIS	GRAND CAVERNS BLIND CAVE MILLIPEDE	S2	G3Q	
ITUNI05040	TRICHOPETALUM WHITEI	LURAY CAVERNS BLIND CAVE MILLIPEDE	S1	G2G3Q	
IMGASA1330	TRIODOPSIS PLATYSAYOIDES	FLAT-SPIRED THREE-TOOTHED LANDSNAIL	S1	G1	LT
IMBIV44010	TRITOGONIA VERRUCOSA	PISTOLGRIP	S2	G4	
IMBIV45020	TRUNCILLA DONACIFORMIS	FAWNSFOOT	S1	G5	
IMBIV45040	TRUNCILLA TRUNCATA	DEERTOE	S1	G5	
IMBIV46050	UNIOMERUS TETRALASMUS	PONDHORN	S1	G4	
IIPLE1D010	UTAPERLA GASPESIANA	A STONEFLY	S1	G3	
IMBIV55010	UTTERBACKIA IMBECILLIS	PAPER PONDSHELL	S2	G5	
IMBIV47050	VILLOSA FABALIS	RAYED BEAN	S1	G1G2	
IMBIV47060	VILLOSA IRIS	RAINBOW	S2	G5	
IMBIV47070	VILLOSA LIENOSA	LITTLE SPECTACLECASE	S1	G5	
IMGASA1250	WEBBHELIX MULTILINEATA	STRIPED WHITELIP	S1	G7	
IILEYLN120	XESTIA TENUICULA	A MOTH	S1	G4	
IILEY7P310	ZALE CALYCANTHATA	A NOCTUID MOTH	SU	G4	

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WEST VIRGINIA NONGAME WILDLIFE AND NATURAL HERITAGE PROGRAM
RARE SPECIES LIST
JUNE 2000

- VERTEBRATES -

<u>CODE</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>RANKING</u>	
ABNKC12040	ACCIPITER COOPERII	COOPER'S HAWK	S3B,S3N	G5
ABNKC12060	ACCIPITER GENTILIS	NORTHERN GOSHAWK	S1B,S1N	G5
ABNKC12020	ACCIPITER STRIATUS	SHARP-SHINNED HAWK	S3B,S3N	G5
AAABC01011	ACRIS CREPITANS BLANCHARDI	BLANCHARD'S CRICKET FROG	SH	G5T5
AAABC01012	ACRIS CREPITANS CREPITANS	EASTERN CRICKET FROG	S2	G5T5
ABNSB15020	AEGOLIUS ACADICUS	NORTHERN SAW-WHET OWL	S2B,S3N	G5
ABPBX91050	AIMOPHILA AESTIVALIS	BACHMAN'S SPARROW	SHB,S1N	G3
AAAAA01170	AMBYSTOMA BARBOURI	STREAMSIDE SALAMANDER	S1	G4
AAAAA01050	AMBYSTOMA JEFFERSONIANUM	JEFFERSON SALAMANDER	S3	G5
AAAAA01130	AMBYSTOMA TEXANUM	SMALLMOUTH SALAMANDER	S1	G5
AFCKA06030	AMEIURUS MELAS	BLACK BULLHEAD	S3S4	G5
ABPBXA0030	AMMODRAMUS HENSLOWII	HENSLOW'S SPARROW	S1B,S1N	G4
ABPBXA0020	AMMODRAMUS SAVANNARUM	GRASSHOPPER SPARROW	S3B,S3N	G5
ABNJB10040	ANAS RUBRIPES	AMERICAN BLACK DUCK	S2B,S4N	G5
AAAAD01010	ANEIDES AENEUS	GREEN SALAMANDER	S3	G3G4
AFCEA01010	ANGUILLA ROSTRATA	AMERICAN EEL	S2	G5
ARAAG01022	APALONE MUTICA MUTICA	MIDLAND SMOOTH SOFTSHELL	SH	G5T5
ABNGA04010	ARDEA HERODIAS	GREAT BLUE HERON	S2B,S4N	G5
ABNSB13010	ASIO OTUS	LONG-EARED OWL	S1B,S1N	G5
ABNNF06010	BARTRAMIA LONGICAUDA	UPLAND SANDPIPER	SHB,S1N	G5
ABNGA01020	BOTAURUS LENTIGINOSUS	AMERICAN BITTERN	S1B,S1N	G4
ABNTA07010	CAPRIMULGUS CAROLINENSIS	CHUCK-WILL'S-WIDOW	S1B,S1N	G5
ABNTA07070	CAPRIMULGUS VOCIFERUS	WHIP-POOR-WILL	S2B,S3N	G5
ABPBY06030	CARDUELIS PINUS	PINE SISKIN	S2B,S4N	G5
ARADB02010	CARPPOPHIS AMOENUS	WORMSNAKE	S3	G5
AFCJC01010	CARPIODES CARPIO	RIVER CARPSUCKER	S2S3	G5
AFCJC01030	CARPIODES VELIFER	HIGHFIN CARPSUCKER	S1	G4G5
ABPBA01010	CERTHIA AMERICANA	BROWN CREEPER	S3B,S4N	G5
ABPBX96010	CHONDESTES GRAMMACUS	LARK SPARROW	S1B,S1N	G5
ABNTA02020	CHORDEILES MINOR	COMMON NIGHTHAWK	S2B,S4N	G5
ABNKC11010	CIRCUS CYANEUS	NORTHERN HARRIER	S1B,S3N	G5
ABPBG10020	CISTOTHORUS PALUSTRIS	MARSH WREN	S1B,S1N	G5
ABPBG10010	CISTOTHORUS PLATENSIS	SEDGE WREN	S1B,S1N	G5
ARAAD02010	CLEMMYS GUTTATA	SPOTTED TURTLE	S1	G5
ARAAD02020	CLEMMYS INSCULPTA	WOOD TURTLE	S2	G4
AFCJB05010	CLINOSTOMUS ELONGATUS	REDSIDE DACE	S1S2	G4
ARACJ02110	CNEMIDOPHORUS SEXLINEATUS	EASTERN SIX-LINED RACERUNNER	S1	G5
ABPAE32010	CONTOPUS COOPERI	OLIVE-SIDED FLYCATCHER	S1B,S1N	G5
ABNKA01010	CORAGYPS ATRATUS	BLACK VULTURE	S2B,S3N	G5
AMACC08020	CORYNORHINUS RAFINESQUII	EASTERN BIG-EARED BAT	S1	G3G4
AMACC08012	CORYNORHINUS TOWNSENDII VIRGINIANUS	VIRGINIA BIG-EARED BAT	S2	G4T2 LE
AFC4E02070	COTTUS CAROLINAE	BANDED SCULPIN	S2	G5
AFC4E02080	COTTUS COGNATUS	SLIMY SCULPIN	S1	G5
ARADE02040	CROTALUS HORRIDUS	TIMBER RATTLESNAKE	S3	G4
AAAAC01010	CRYPTOBRANCHUS ALLEGANIENSIS	EASTERN HELLBENDER	S2	G4
AMABA04010	CRYPTOTIS PARVA	LEAST SHREW	S2	G5
AFCQC01010	CRYSTALLARIA ASPRELLA	CRYSTAL DARTER	S1	G3
AFCJC04010	CYCLEPTUS ELONGATUS	BLUE SUCKER	S1	G3
AFCJB49010	CYPRINELLA ANALOSTANA	SATINFIN SHINER	S2	G5
ABPBX03060	DENDROICA CORONATA	YELLOW-RUMPED WARBLER	S2B,S4N	G5
AAAAD03080	DESMOGNATHUS QUADRAMACULATUS	BLACK-BELLIED SALAMANDER	S3	G5
AAAAD03090	DESMOGNATHUS WELTERI	BLACK MOUNTAIN SALAMANDER	S1	G4
ABPBXA9010	DOLICHONYX ORYZIVORUS	BOBOLINK	S1B,S2N	G5
ARADB13022	ELAPHE GUTTATA GUTTATA	CORNSNAKE	S1	G5T5
ABPAE33030	EMPIDONAX ALNORUM	ALDER FLYCATCHER	S3B,S3N	G5
ABPAE33010	EMPIDONAX FLAVIVENTRIS	YELLOW-BELLIED FLYCATCHER	S1B,S1N	G5
AFCJC05010	ERIMYZON OBLONGUS	CREEK CHUBSUCKER	S3	G5
AFCHD01012	ESOX AMERICANUS VERMICULATUS	GRASS PICKEREL	S2	G5T5
AFCQC02100	ETHEOSTOMA CAMURUM	BLUEBREAST DARTER	S3	G4
AFCQC02400	ETHEOSTOMA LONGIMANUM	LONGFIN DARTER	S1	G4
AFCQC02420	ETHEOSTOMA MACULATUM	SPOTTED DARTER	S1	G2
AFCQC02540	ETHEOSTOMA OLMSTEDI	TESSELLATED DARTER	S2	G5
AFCQC02550	ETHEOSTOMA OSBURNI	CANDY DARTER	S2	G3

AFCQC01060	ETHEOSTOMA PELLUCIDUM	EASTERN SAND DARTER	S2S3	G3	
AFCQC02800	ETHEOSTOMA TIPPECANOE	TIPPECANOE DARTER	S2	G3	
ARACH01011	EUMECES ANTHRACINUS ANTHRACINUS	NORTHERN COAL SKINK	S2	G5T5	
ARACH01080	EUMECES LATICEPS	BROAD-HEADED SKINK	S2	G5	
AAAAD05050	EURYCEA LUCIFUGA	CAVE SALAMANDER	S3	G5	
AFCJB12010	EXOGLOSSUM LAURAE	TONGUETIED MINNOW	S3	G4	
ABNKD06070	FALCO PEREGRINUS	PEREGRINE FALCON	S1B,S2N	G4	
AFCNB04060	FUNDULUS DIAPHANUS	BANDED KILLIFISH	S2	G5	
ABNNF18010	GALLINAGO GALLINAGO	COMMON SNIPE	S1B,S2N	G5	
ABNME13010	GALLINULA CHLOROPUS	COMMON MOORHEN	S1B,S1N	G5	
AMAFB09023	GLAUCOMYS SABRINUS FUSCUS	NORTHERN FLYING SQUIRREL	S2	G5T2	LE
ARAAD05040	GRAPTEMYS GEOGRAPHICA	NORTHERN MAP TURTLE	S2	G5	
AAAAD06030	GYRIANPHILUS SUBTERRANEUS	WEST VIRGINIA SPRING SALAMANDER	S1	G1Q	
ABNKC10010	HALIAETUS LEUCOCEPHALUS	BALD EAGLE	S2B,S2N	G4	LT
ARADB17020	HETERODON PLATIRHINOS	EASTERN HOG-NOSED SNAKE	S3	G5	
AFCGA01010	HIODON ALOSOIDES	GOLDEYE	S1S2	G5	
AFCGA01020	HIODON TERGISUS	MOONEYE	S3	G5	
AFCJB16060	HYBOGNATHUS REGIUS	EASTERN SILVERY MINNOW	S1	G5	
AFBAA01010	ICHTHYOMYZON BDELLIUM	OHIO LAMPREY	S2	G3G4	
AFBAA01030	ICHTHYOMYZON FOSSOR	NORTHERN BROOK LAMPREY	S1	G4	
AFBAA01050	ICHTHYOMYZON GREELEYI	MOUNTAIN BROOK LAMPREY	S1	G3G4	
AFBAA01060	ICHTHYOMYZON UNICUSPIS	SILVER LAMPREY	S2S3	G5	
AFCJC07020	ICTIOBUS CYPRINELLUS	BIGMOUTH BUFFALO	S1	G5	
AFCJC07030	ICTIOBUS NIGER	BLACK BUFFALO	S2	G5	
ABNGA02010	IXOBRYCHUS EXILIS	LEAST BITTERN	S1B,S1N	G5	
AFBAA02010	LAMPETRA AEPYPTERA	LEAST BROOK LAMPREY	S2S3	G5	
AFBAA02020	LAMPETRA APPENDIX	AMERICAN BROOK LAMPREY	S2	G4	
ARADB19023	LAMPROPELTIS GETULA GETULA	EASTERN KINGSSNAKE	S2	G5T5	
ABPBR01037	LANIUS LUDOVICIANUS MIGRANS	MIGRANT LOGGERHEAD SHRIKE	S1B,S1N	G5T3Q	
AMACC02010	LASIONYCTERIS NOCTIVAGANS	SILVER-HAIRED BAT	S2	G5	
AFCQB11040	LEPOMIS GULOSUS	WARMOUTH	S2	G5	
AFCQB11050	LEPOMIS HUMILIS	ORANGESPOTTED SUNFISH	S2	G5	
ABPBX09010	LIMNOTHLYPIS SWAINSONII	SWAINSON'S WARBLER	S2B,S2N	G4	
ABNJB20010	LOPHODYTES CUCULLATUS	HOODED MERGANSER	S1B,S4N	G5	
AFCJB51060	LUXILUS CORNUTUS	COMMON SHINER	S3	G5	
AFCJB52010	LYTHRURUS ARDENS	ROSEFIN SHINER	S1	G5	
AFCJB52080	LYTHRURUS UMBRATILIS	REDFIN SHINER	S3	G5	
AFCJB53080	MACRHYBOPSIS HYOSTOMA	SPECKLED CHUB	S3	G5	
AFCJB53040	MACRHYBOPSIS STORERIANA	SILVER CHUB	S3S4	G5	
AFCJB54010	MARGARISCUS MARGARITA	PEARL DACE	S3S4	G5	
ABNYF04040	MELANERPES ERYTHROCEPHALUS	RED-HEADED WOODPECKER	S3B,S3N	G5	
AMAFF11091	MICROTUS CHROTORRHINUS CAROLINENSIS	SOUTHERN ROCK VOLE	S2	G4T3	
AMAFF11140	MICROTUS OCHROGASTER	PRAIRIE VOLE	S3	G5	
AFCJC10040	MOXOSTOMA CARINATUM	RIVER REDHORSE	S3	G4	
AMACC01040	MYOTIS GRISESCENS	GREY BAT	SA	G3	LE
AMACC01130	MYOTIS LEIBII	EASTERN SMALL-FOOTED BAT	S1	G3	
AMACC01100	MYOTIS SODALIS	INDIANA BAT	S1	G2	LE
AMAFF08100	NEOTOMA MAGISTER	ALLEGHENY WOODRAT	S3	G3G4	
AFCJB26040	NOCOMIS LEPTOCEPHALUS	BLUEHEAD CHUB	S3	G5	
AFCJB26060	NOCOMIS PLATYRHYNCHUS	BIGMOUTH CHUB	S3S4	G4Q	
AFCJB28060	NOTROPIS AMOENUS	COMELY SHINER	S3S4	G5	
AFCJB28100	NOTROPIS ARIOMMUS	POPEYE SHINER	S2	G3	
AFCJB28190	NOTROPIS BLENNIUS	RIVER SHINER	S2	G5	
AFCJB28230	NOTROPIS BUCHANANI	GHOST SHINER	S3S4	G5	
AFCJB28770	NOTROPIS PROCNE	SWALLOWTAIL SHINER	S2	G5	
AFCJB28840	NOTROPIS SCABRICEPS	NEW RIVER SHINER	S2	G4	
AFCKA02040	NOTURUS ELEUTHERUS	MOUNTAIN MADTOM	S1	G4	
AFCKA02220	NOTURUS STIGMOSUS	NORTHERN MADTOM	S1	G3	
AMACC06010	NYCTICEIUS HUMERALIS	EVENING BAT	SH	G5	
ABNGA11010	NYCTICORAX NYCTICORAX	BLACK-CROWNED NIGHT-HERON	SHB,S1N	G5	
AMAFF04010	OCHROTOMYS NUTTALLI	GOLDEN MOUSE	S2	G5	
ARADB23010	OPHEODRYS AESTIVUS	ROUGH GREENSNAKE	S3	G5	
ABNKC01010	PANDION HALIAETUS	OSPREY	S1B,S2N	G5	
AFCJB58010	PARARHINICHTHYS BOWERSI	CHEAT MINNOW	S1S2	G1G2Q	
AFCQC04060	PERCINA COPELANDI	CHANNEL DARTER	S2S3	G4	
AFCQC04090	PERCINA EVIDES	GILT DARTER	S2	G4	
AFCQC04100	PERCINA GYMNOCEPHALA	APPALACHIA DARTER	S3	G4	
AFCQC04120	PERCINA MACROCEPHALA	LONGHEAD DARTER	S2	G3	
AFCQC04170	PERCINA NOTOGRAMMA	STRIPEBACK DARTER	S1	G4	
AFCQC04220	PERCINA PELTATA	SHIELD DARTER	S1	G5	
AFCQC04230	PERCINA PHOXOCEPHALA	SLENDERHEAD DARTER	S1	G5	
AFCQC04260	PERCINA SCIERA	DUSKY DARTER	S3	G5	

AFCQC04270	PERCINA SHUMARDI	RIVER DARTER	S1	G5
ABPAU09010	PETROCHELIDON PYRRHONOTA	CLIFF SWALLOW	S3B,S3N	G5
AFCJB30040	PHENACOBIVUS TERETULUS	KANAWHA MINNOW	S1	G3G4
AFCJB31030	PHOXINUS ERYTHROGASTER	SOUTHERN REDBELLY DACE	S2S3	G5
AFCJB31050	PHOXINUS OREAS	MOUNTAIN REDBELLY DACE	S3	G5
AFCJB32040	PIMEPHALES VIGILAX	BULLHEAD MINNOW	S2	G5
ARADB26012	PITUOPHIS MELANOLEUCUS MELANOLEUCUS	NORTHERN PINESNAKE	SH	G4T4
AAAAD12120	PLETHODON NETTINGI	CHEAT MOUNTAIN SALAMANDER	S2	G2 LT
AAAAD12140	PLETHODON PUNCTATUS	COW KNOB SALAMANDER	S1	G3
AAAAD12400	PLETHODON VIRGINIA	SHENANDOAH MOUNTAIN SALAMANDER	S2	G2G3Q
ABNCA02010	PODILYMBUS PODICEPS	PIED-BILLED GREBE	S2B,S2N	G5
AFCAB01010	POLYODON SPATHULA	PADDLEFISH	S1	G4
ABNME08020	PORZANA CAROLINA	SORA	S1B,S1N	G5
ABPBX07010	PROTONOTARIA CITREA	PROTHONOTARY WARBLER	S2B,S2N	G5
AAABC05071	PSEUDACRIS TRISERIATA FERIARUM	UPLAND CHORUS FROG	S2	G5T5
ARAAD07020	PSEUDEMYIS CONCINNA	RIVER COOTER	S1S2	G5
ARAAD07050	PSEUDEMYIS RUBRIVENTRIS	NORTHERN RED-BELLIED COOTER	S1	G5
AAAAD13011	PSEUDOTRITON MONTANUS DIASTICTUS	MIDLAND MUD SALAMANDER	S1	G5T5
AAAAD13020	PSEUDOTRITON RUBER	NORTHERN RED SALAMANDER	S3	G5
ABNME05020	RALLUS ELEGANS	KING RAIL	S1B,S1N	G4G5
ABNME05030	RALLUS LIMICOLA	VIRGINIA RAIL	S1B,S1N	G5
AAABH01170	RANA PIPIENS	NORTHERN LEOPARD FROG	S2	G5
AMAFF02020	REITHRODONTOMYS HUMULIS	EASTERN HARVEST MOUSE	S1	G5
ABPAU08010	RIPARIA RIPARIA	BANK SWALLOW	S3B,S3N	G5
AAABF01040	SCAPHIOPUS HOLBROOKII	EASTERN SPADEFOOT	SH	G5
ARACH03010	SCINCELLA LATERALIS	LITTLE BROWN SKINK	S3	G5
ABPBX10020	SEIURUS NOVEBORACENSIS	NORTHERN WATERTHRUSH	S3B,S3N	G5
AMABA01210	SOREX DISPAR	LONG-TAILED SHREW	S2S3	G4
AMABA01251	SOREX HOYI WINNEMANA	SOUTHERN PYGMY SHREW	S2S3	G5T4
AMABA01151	SOREX PALUSTRIS PUNCTULATUS	SOUTHERN WATER SHREW	S1	G5T3
ABNYF05010	SPHYRAPICUS VARIUS	YELLOW-BELLIED SAPSUCKER	S1B,S3N	G5
AMAJF05010	SPILOGALE PUTORIUS	EASTERN SPOTTED SKUNK	S2S3	G5
AMAEB01090	SYLVILAGUS OBSCURUS	APPALACHIAN COTTONTAIL	S3	G4
AMAFF17010	SYNAPTOMYS COOPERI	SOUTHERN BOG LEMMING	S2	G5
ARADB36120	THAMNOPHIS SAURITUS	EASTERN RIBBONSNAKE	S2	G5
AFCJC13030	THOBNURNIA RHOTHOECA	TORRENT SUCKER	S3	G4
ABPBG07011	THRYOMANES BEWICKII ALTUS	APPALACHIAN BEWICK'S WREN	S1B,S1N	G5T2Q
ARAAD09012	TRACHEMYS SCRIPTA ELEGANS	RED-EARED TURTLE	S1	G5T5
ABNSA01010	TYTO ALBA	BARN OWL	S1B,S1N	G5
AFCHC03010	UMBRA LIMI	CENTRAL MUDMINNOW	S1	G5
ABPBX01030	VERMIVORA CHRYSOPTERA	GOLDEN-WINGED WARBLER	S3B,S3N	G4
ABPBX01060	VERMIVORA RUFICAPILLA	NASHVILLE WARBLER	S1B,S1N	G5
ARADB39022	VIRGINIA VALERIAE PULCHRA	MOUNTAIN EARTHSNAKE	S1	G5T3T4
AMAFH01010	ZAPUS HUDSONIUS	MEADOW JUMPING MOUSE	S3	G5

179 Species

Appendix C
Finding of No Significant Impact (FONSI)

FINDING OF NO SIGNIFICANT IMPACT FOR CONSTRUCTION OF FEDERAL EMERGENCY MANAGEMENT AGENCY TEMPORARY EMERGENCY HOUSING IN SOUTHERN WEST VIRGINIA

FEMA-1378-DR-WV

INTRODUCTION

As a result of damages from severe storms, flooding, and landslides, the Federal Emergency Management Agency (FEMA) was authorized under a June 3, 2001 Presidential Major Disaster Declaration (FEMA-1378-DR-WV) to provide Federal disaster assistance, including Individual Assistance, for disaster-designated areas of West Virginia.

In order to implement its Individual Assistance Program in a timely and effective manner, FEMA has proposed an expedited process for assessing the potential environmental impacts of constructing temporary and transient emergency housing for displaced disaster victims of FEMA-1378-DR-WV.

A Programmatic Environmental Assessment (PEA) was prepared pursuant to Section 102 of the National Environmental Policy Act (NEPA) of 1969 as implemented by the regulations promulgated by the President's Council on Environmental Quality (40 CFR Parts 1500-1508). This is in accordance with 44 Code of Federal Regulations (CFR) for FEMA, Subpart B – Agency Implementing Procedures, Section 10.9. The purpose of the PEA is to analyze potential environmental impacts of the proposed expedited process for compliance with applicable State and Federal laws and regulations used during site selection and development to provide temporary and transient emergency housing, and to determine whether to prepare an Environmental Impact Statement (EIS) or Finding of No Significant Impact (FONSI).

BACKGROUND

On May 15, 2001, heavy rains overnight caused widespread flooding in West Virginia, especially in the southern part of the state. A Presidential Major Disaster Declaration (FEMA-1378-DR-WV) was declared on June 3, 2001 at the request of the Governor. This declaration initially designated the following six counties for Individual Assistance: Boone, Kanawha, Logan, Mercer, Raleigh and Wyoming. The following nine counties were added for Individual Assistance on June 11, 2001: Cabell, Clay, Lincoln, Mason, McDowell, Mingo, Roane, Summers, and Wayne. Preston County was added for Individual Assistance on June 18, 2001. Calhoun and Putnam Counties were added for Individual Assistance on July 5, 2001. Flash flooding occurred on July 8, 2001 extending and exacerbating the damage already suffered in the state. Doddridge and Fayette Counties were added for Individual Assistance on July 10, 2001. Marion and Taylor counties were added for Individual Assistance on July 16, 2001. Heavy rainfall during the period of July 28 through July 30, 2001 caused additional flooding. Greenbrier and Nicholas Counties were added for Individual Assistance on July 31, 2001 for a total of 24 counties designated for Individual Assistance. Over 2,500 homes and businesses were impacted, with 1,000 to 1,100 destroyed and 1,500 to 1,600 receiving major damages.

CRITICAL EMERGENCY HOUSING NEED

By July 18, 2001, FEMA had reviewed more than 3,255 requests for individual assistance. There are insufficient rental resources available to house displaced disaster victims and the use of hotel rooms, shelters, or staying with family/friends is only appropriate for a very limited time period. To provide emergency temporary housing for the people displaced by the flooding in West Virginia, FEMA is proposing to construct temporary and transient emergency housing at a number of sites throughout the damaged areas. Because of the topography and geology of the area, a number of relatively small temporary housing sites are expected. These will likely be cluster sites where six to twenty or more housing units could be placed, depending on the type of unit and the size of the site. The plan is to design spaces and install between 50 and 500 temporary and transient manufactured homes. The sites will be constructed in phases, as needed.

The substantial number of people displaced by the disaster as evidenced by the growing number of applications for Individual Assistance has created a critical need for temporary and transient housing. The proposed action requires implementation of a mechanism to ensure compliance with applicable Federal, State, and local environmental laws and regulations, in addition to supporting the timely and effective provision of temporary and transient emergency housing for disaster victims, while minimizing the potential for adverse environmental impacts. Under the proposed expedited process, FEMA will assess each proposed group site in a Supplemental Environmental Assessment (SEA) using a Record of Environmental Review.

FINDINGS

FEMA has made the following determinations from the information contained in the PEA:

The proposed action, as described in the PEA, will not result in any significant adverse impacts to existing land use, water resources (surface water, ground water, Waters of the United States, wetlands, and floodplains), air quality, noise, biological resources (vegetation, fish and wildlife, State and Federally listed threatened or endangered species and critical habitats) safety, hazardous materials and waste, cultural resources, or result in disproportionately high or adverse effects on minority or low-income populations. The proposed action is also in compliance with all relevant Federal, State, and local laws.

The public comment period began July 30, 2001, and ended at 6 p.m. on August 2, 2001. A legal notice was published in The Register Herald (Beckley), The Daily Telegram (Bluefield), The Charleston Gazette & The Daily Mail (Charleston), The Exponent and Telegram (Clarksburg), The Dominion Post (Morgantown), and The Daily News (Williamson) from July 30, 2001 through August 2, 2001. Copies of the PEA were available for review at the various Disaster Recovery Centers established by FEMA in various disaster-designated counties. There were no comments to the Public Notice via phone, fax and email. Therefore, public comments were not available to be evaluated, to be considered in the final decision-making, or to be incorporated, as appropriate, in the FONSI.

CONDITIONS

The following conditions must be met as part of this proposed action. Failure to comply with these conditions may jeopardize Federal funds:

- 1) The findings of the PEA and this FONSI apply only to the sites that will be specifically described and evaluated. Any other areas considered at a later date as a site for emergency temporary housing resulting from the flood event must be evaluated for compliance with NEPA and other applicable Federal, State and local environmental and historic preservation laws, regulations, and Executive Orders.
- 2) Once the need for emergency housing for disaster victims no longer exists, the temporary housing sites shall be dismantled, and site restoration work will be coordinated with the site owner. However, if the current or subsequent property owners of any or all of the sites evaluated in the PEA wish to convert any or all of the sites used for temporary emergency housing to permanent housing sites, the property owner is required to hold a Public Hearing and consider the public's comments prior to the action. Compliance with all local planning and zoning processes will be required.
- 3) No historic or cultural remains of any significance are likely to be encountered within the selected project area. However, in accordance with the National Historic Preservation Act, should unanticipated historic or cultural materials be encountered during construction, all construction activities shall cease immediately within 100 feet of the remains until their cultural affiliation and ultimate disposition is determined in consultation with the West Virginia Division of Culture and History, local Indian tribes, and other interested parties.
- 4) Under the National Pollution Discharge Elimination System (NPDES) general permit, a Stormwater Pollution Prevention Plan (SWPPP) will be prepared for the proposed sites. A Notice of Intent (NOI) and an Environmental Protection Agency (EPA) form 3510-6 will be submitted to the appropriate agency at least 48 hours prior to any ground-disturbing activity.
- 5) Preparation (clearing and grading) of the proposed temporary emergency housing sites may require the removal of vegetation and may increase short-term soil erosion. Appropriate erosion control measures will be used during construction. Upon completion of construction, native species will be used to revegetate the site over time. Informal consultation with State and Federal resource agencies and any needed corrective action(s) will ensure that the project does not adversely impact regional species diversity.
- 6) Wetlands shall be identified and avoided prior to any construction activities. Section 404 and 401 permits will be obtained, as required, prior to any construction activity, and all permit conditions will be incorporated into the project design or implementation.
- 7) Construction vehicles and equipment shall be stored and maintained in good working order to minimize pollutant emissions and to minimize potential for spills of hazardous materials including fuels, coolants, lubricants and consequent soil and water contamination.

- 8) The siting and design of disaster relief housing will incorporate where feasible the cultural and social needs of the flood victims, and the existing communities into which they are placed.

CONCLUSIONS

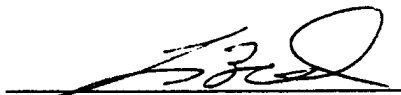
The actions identified for this proposed project have been reviewed and, to the best of our knowledge, do not have the potential for significant cumulative effects when the proposed action is combined with past, present, and reasonably foreseeable future actions in accordance with 44 CFR Part 10.8 (d)(3)(x).

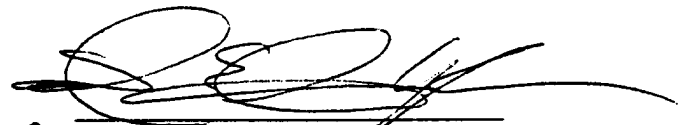
Based on the attached PEA, SEA(s), and other above described sources, FEMA has determined that the proposed project qualifies as a major Federal action that will not significantly affect the quality of the natural and human environment. As a result of the FONSI, an EIS will not be prepared (44 CFR Part 10.8) and the proposed project as described in the attached PEA and SEA(s) may proceed.

EXECUTION

This document may be executed with duplicate counterparts

APPROVAL


Eugene Gruber, P.E.
Environmental Officer
FEMA Region III


for Carlos N. Mitchell
Federal Coordinating Officer/
Disaster Recovery Manager
FEMA-1376-DR-WV

Date 8/2/01

Date 2 AUG 2001

Appendix D
Public Notice

PUBLIC NOTICE

July 30, 2001

DEVELOPMENT OF TEMPORARY AND TRANSIENT EMERGENCY HOUSING FOR DISASTER VICTIMS IN WEST VIRGINIA

Interested parties are hereby notified that the Federal Emergency Management Agency (FEMA) is proposing the development of sites for temporary emergency disaster housing for individuals displaced as a result of flooding and severe storms in 24 West Virginia counties. The flooding and severe storms that occurred on July 8, 2001 resulted in a reopening of the incident period for Presidential Major Disaster Declaration, FEMA-1378-DR-WV.

The proposed action is for the development of sites for manufactured housing units (e.g. travel trailers or mobile homes) to be located in any of the 24 declared counties. However, the most likely counties slated for this site development are Wyoming, McDowell, Raleigh, and Fayette. Activities would include, where necessary, site clearing, grading, road construction, placement of utilities (electricity, telephones, water, and sewer), and the transport and hook-up of manufactured homes to the site. A Programmatic Environmental Assessment (PEA) was written to evaluate the potential impacts of the proposed emergency action on the human and natural environment. The findings of the PEA indicate that a site-specific evaluation, using the Record of Environmental Review (RER), addresses the requirements of the National Environmental Policy Act (NEPA), Clean Air Act (CAA), Clean Water Act (CWA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), Executive Orders 11988 (Floodplain Management), 11990 (Protection of Wetlands), and 12898 (Environmental Justice), and various hazardous and toxic waste regulations and will ensure compliance with these Federal environmental laws, regulations, and Executive Orders.

The purpose of this notice is to solicit public comment on the proposed temporary and transient housing project. If no comments are received regarding the recovery plan outlined in the PEA, a draft Finding of No Significant Impact (FONSI) will be executed by FEMA. The FONSI serves as recordation that any concerns regarding the proposed emergency disaster plan have been addressed in the PEA, and that during the public comment period no comments of concern were received by the reviewing agencies or the public at large.

Using the RER as guidance, site information will be used to compile a Supplemental Environmental Assessment (SEA) for each proposed temporary housing site. The SEA will evaluate and assess each site and serve as documentation of the results. A separate public notice will be issued for each SEA that will include information regarding the duration of the public comment period as well as locations of Disaster Recovery Centers (DRCs) where each SEA will be available for individual review.

Due to the emergency nature of this action, the public comment period has been shortened. Any written or verbal comments regarding the environmental action for the proposed emergency disaster housing action can be provided to the Environmental Liaison Office, Third floor, 1700 MacCorkle Avenue, SE, Charleston, West Virginia, 25314, (304-561-3046) between 8 a.m. and 6 p.m., beginning July 30, through August 2, 2001. In addition, facsimiles can be sent to (304-561-3280). The PEA and draft FONSI are available for public review at the FEMA Disaster Recovery Centers, located in the towns of Northfolk, Welch, Mullens, Oceana, and Whitesville between 9:00 a.m. and 7:00 p.m. If no comments are received, this initial Public Notice will also serve as the final Public Notice.

All other questions regarding disaster assistance or the availability of emergency temporary housing should be directed to FEMA's Teleregistration line at 1-800-462-9029 (TTY 1-800-462-7585) for hearing or speech-impaired persons.

Appendix E

National Register Sites

Historic Properties Listed On The National Register Of Historic Places In Affected Counties.

Listing as of 7/20/2001

Each entry is followed by date of listing in (); and count of contributing properties in [].

BOONE COUNTY

Coal River Locks, Dams and Log Boom Archaeological District, Boone,
Kanawha* and Lincoln Counties, Address restricted (11/24 /97) [59]

Madison

Boone County Courthouse, State Street (4/9/81) [1]

Nellis

Nellis Historic District, Off County Route 1 (3/24/2000) [86]

CABELL COUNTY

Barboursville

Thornburg House, 700 Main Street (4/25/91) [2]

Green Bottom Vicinity

General Albert Gallatin Jenkins House, 8814 Ohio River Road, SR 2, (5/22/78)
[1]

Guyandotte

Thomas Carroll House, (Maddie Carroll House) 234 Guyan Street (6/1/73) [1]

Huntington

Baltimore and Ohio Railroad Depot, 1100 Block of 2nd Avenue (10/30/73) [1]
Cabell County Courthouse, 5th Avenue and 8th Street (9/2/82) [1]
Campbell-Hicks House, 1102 5th Avenue (8/19/85) [1] additional documentation
Carnegie Public Library, 900 5th Street (4/3/80) [1]
"Coin" Harvey House, 1305 Third Avenue (8/21/72) [1]
Douglass Junior and Senior High School, 10th Avenue and Bruce Street
(12/5/85) [1]
Huntington Downtown Historic District, Roughly bounded by 3rd Avenue, 10th
Street, 5th Avenue, 8th and 7th Streets (2/24/86) [62]
Liggett & Myers Tobacco Company, 9- 27th Street (8/14/98) [2]
Masonic Temple-Watts/Ritter Wholesale Drygoods, 1100-1108 Third Avenue
(8/26/93) [1]
Memorial Arch, Memorial Park, 11th Avenue and Memorial Blvd (4/16/81) [1]
Ninth Street West Historic District, (St. Cloud) 9th Street, Madison and Jefferson

Avenues (11/28/80) [15]
Ohev Sholom Temple, (B'Nai Sholom Temple) 949 10th Avenue (3/17/94) [1]
Old Main, Marshall University Campus, 16th Street (7/16/73) [1]
Ricketts House, (Stevens Residence) 2301 Washington Boulevard (7/15/94) [1]
Ritter Park Historic District, Ritter Park, 13th Avenue between 8th and 12th
Streets (11/28/90) [73]
Simms School, 1680 Eleventh Avenue (5.12.97) [1]
U.S. Post Office and Courthouse, 9th Street and 5th Avenue (4/15/82) [1]

Huntington Vicinity

West Virginia Colored Children's Home, 3353 US 60, (11/13/97) [1]

Lesage Vicinity

Clover Archaeological Site, Address Restricted, NATIONAL HISTORIC
LANDMARK (4/27/92) [1]

Milton

Mud River Covered Bridge, off US 60 on SR 25 over Mud River, West Virginia Covered
Bridges TR (6/10/75) [1]

Logan

Chafin House, 581 Main Street (3/28/94) [1]

Sarah Ann Vicinity

Hatfield Cemetery, S. of Sara Ann on US 119, *Hatfield Cemeteries of
Southwestern West Virginia TR (11/28/80) [1]*

CALHOUN COUNTY

Sand Ridge

Alberts Chapel, US 119/33 (4/15/82) [1]

CLAY COUNTY

Clay

Old Clay County Courthouse, Main Street (4/20/79) [2]

DODDRIDGE COUNTY

Center Point Vicinity

Center Point Covered Bridge, Jct of CR 10 & CR 23 (8/29/83) [1]

New Milton

Krenn School, (St. Clara Community Building) CR 66 Little Buck Run Road
(3/29/89) [1]

St. Clara

Gamsjager-Wysong Farm, CR 66 (9/4/86) [3]

West Union

Doddridge County Courthouse, Court Square (3/18/82) [1]

Lathrop Russell Charter House, 109 High Street (3/25/93) [2]

W. Scott Stuart House, 104 Chancery Street (3/25/93) [1]

FAYETTE COUNTY

Ansted

"Contentment", (Col. George Imboden House) Along US 60 (12/31/74) [1]

"Halfway House", (Tyree Tavern) Off old US 60 (12/18/78) [1]

Page-Vawter House, US 60 (8/21/85) [1]

Clifftop Vicinity

Camp Washington-Carver Complex, CR 11/3 (6/20/80) [6]

Old Stone House/Tyree Stone Tavern, E. of Clifftop off US 19 on SR 10
(6/20/75) [1]

Fayetteville

Altamont Hotel, 110 Fayette Avenue (8/29/79) [1]

Fayette County Courthouse, Court Street between Wiseman and Maple Avenues
(9/6/78) [1]

Fayetteville Historic District, Roughly bounded by SR 16, Maple & Fayette
Avenues
(12/20/90) [111]

Fayetteville Historic District, Additional Documentation, Roughly bounded by SR
16,

Maple and Fayette Avenues (11/12/97) [22]

E.B. Hawkins House, (Hawkins-Ballard House), 120 Fayette Avenue (1/18/90)
[5]

Fayetteville Vicinity

Kay Moor Mine, Along the New River S of US 19 (11/8/90) [49]

Gauley Bridge

Gauley Bridge Railroad Station, (C&O Station), Off SR 16/39 (5/15/80) [1]

Glen Ferris

Glen Ferris Inn, (Stockton's Inn), US 60 overlooking Kanawha Falls (5/25/91) [1]

Glen Jean

Bank of Glen Jean, Main Street (2/10/83) [1]

Montgomery

Main Building, WV Institute of Technology Campus (6/25/80) [1]

Oak Hill

Oak Hill Railroad Depot, Corner of Virginia Street & Central Ave (3/17/95) [1]

Prince

Prince Brothers General Store (Berry Store), SR 41 (4/17/86) [1]

Thurmond

Thurmond Historic District, SR 25 at New River (1/27/84) [45]

Whipple

Whipple Company Store, Jct of CR 15 and CR 21/20 (4/26/91) [1]

KANAWHA COUNTY

Belle

Samuel Shrewsbury, Sr. House (Old Stone House), 310 Stubb Drive (11/2/78) [1]

Cedar Grove

"Little Brick Church" (Virginia's Chapel) .75 miles E of Kelley's Creek on US 60 (12/16/74) [1]

"Cedar Grove" (Tompkins House), SE of jct. Of US 60 and Kanawha and James River

Turnpike (3/10/75) [1]

Charleston

"Breezemont", (Gen. C. C. Watts House) 915 Breezemont Drive (4/15/82) [1]

Charleston City Hall, Court and Virginia Streets (6/6/88) [1]

Charleston Baptist Church, 209 Morris (4/4/2000)

Charleston Municipal Auditorium, 224-232 Virginia Street (11/22/1999) [1]

Craik-Patton House, US 60, Daniel Boone Roadside Park (8/12/70) Moved and Re-nominated (4/16/75) [1]

Daniel Boone Hotel, 405 Capitol Street (8/21/84) [1]

East End Historic District, Roughly bounded by the Kanawha River, Bradford, Quarrier and Greenbrier Streets; and Kanawha Blvd from California to East Ave (4/20/78) [400]

Edgewood Historic District, Roughly bounded by Edgewood Drive, Highland, Beech,

Chester, and Lower Chester (11/9/89) [165]

Garnet High School, 422 Dickinson Street (7/24/90) [1]

Elizabeth Harden Gilmore House, 514 Broad Street (9/17/88) [2]

Holly Grove Mansion, 1710 E. Kanawha Boulevard (8/28/74) [1]

Kanawha County Courthouse, Virginia and Court Streets (9/6/78) [1]

Kearse Theatre, 161, 165, 167 Summers Street, (11/28/80) [1] DEMOLISHED (1982)
 Laidley-Summers-Quarrier House ("Glenwood"), 800 Orchard Street (12/13/78) [2]
 Mattie V. Lee House, 810 Donnally Street (6/16/92) [1]
 Littlepage Stone Mansion, 1809 W. Washington Street (9/2/82) [1]
 Loewenstein and Sons Hardware Building, 223-225 Capitol Street (11/1/85) [1]
 MacFarland House, 1310 Kanawha Blvd, East (12/10/79) [2]
 Plaza Theatre, 123 Summers Street (10/30/85) [1]
 Simpson Memorial Methodist Episcopal Church, 607 Shrewsbury Street (8/5/91) [1]
 Spring Hill Cemetery Historic District, 1554 Farnsworth Drive (8/18/85) [2]
 Samuel Starks House, 413 Shrewsbury Street (2/1/88) [1]

South Hills Multiple Resource Area (11/26/84) [47]
 Barnes-Wellford House, 66 Abney Circle
 "Bird Haven", (I.N. Johnson, F. Marshall Home) 733 Myrtle Road
 "Briarwood", (R.H. Merrill House) 1240 Staunton Road
 Bougemont Complex, Bougemont Drive
 Chesapeake and Ohio Depot, 305 MacCorkle Avenue
 W.E. Chilton, II House, 1266 Loudon Heights Road
 Cox-Morton House, 640 Holley Road
 Cox-Parks House, 710 Myrtle Road
 Crawford-Gardner House, 743 Myrtle Road
 "Dalgain", (McCabe House) 1223 Staunton Road
 Danner-Fletcher House, 626 Holley Road
 William S. Gilliland Log Cabin and Cemetery, Loudon Heights and Bridge Roads
 Grosscup Road Historic District, Grosscup, Rosecommon, Roller and Bridge Roads (1/16/84) (20)
 McAndrews-Gallaher House, 601 Briarwood Road
 "Stoneleigh", (Ward-Payne House) 909 Ridgeway Road
 Thomas-McJunkin-Love House, 920 Newton Road

St. John's Episcopal Church, 1105 Quarrier Street (11/2/89) [1]
 "Sunrise", (MacCorkle Mansion) 746 Myrtle Road (7/24/74) [1]
 United Carbon Building, 1018 Kanawha Boulevard East (7/15/94) [1]
 West Virginia Capitol Complex, Kanawha Blvd East, and Greenbrier Avenue (12/31/74) [5]
 Col. Henry Hewitt Wood House, 6560 Roosevelt Avenue, SE (11/28/80) [1]
 Woodrums Building, 602 Virginia Street, East (4/18/96) [1]
 Young-Noyes House, 2122 Kanawha Avenue (4/25/91) [1]

Charleston Vicinity

Fort Scammon, Address Restricted (3/26/76) [1]

Clendenin

Clendenin Historic District, Along Main Street, Maywood Avenue, Elk Avenue, and Koontz Avenue (5/2/96) [38]

Coalburg

William H. and William S. Edwards House, SR 61 NE of Cabin Creek (5/11/90) [4]

Dunbar

Dutch Hollow Wine Cellars, Dutch Hollow Road (12/18/70) [2]

East Bank

John Harriman House, 2233 3rd Avenue (12/15/78) [1]

East Bank Vicinity

Good Shepherd Church, SR 61 SW of East Bank at Coalburg (4/26/90) [2]

Hansford

Felix G. Hansford House, Centre and 14th Streets (1/12/84) [2]

Institute

Canty House ("The Mognolia"), WV State College Campus (9/23/88) [1]

East Hall, West Quadrangle, WV State College Campus (9/26/88) [1]

London Vicinity

Booker T. Washington High School, Wyatt Street off US 60 (12/3/99)[1]

Loudendale Vicinity

Kanawha State Forest Historic District, CR 42/43, 2.6 miles S of Charleston (3/25/93) [8]

Malden

African Zion Baptist Church, 4104 Malden Drive, (12/27/74) [1]

Malden Historic District, Roughly bounded by RR tracks, Kanawha River, Georges Drive and US 60 (7/18/80) [100]

Marmet

Ebenezer Chapel, Ohio Avenue, S at Hillview Drive (12/16/74) [1]

Pratt

Mother Jones Prison, Lot 23, Clifton Addition, NR Listing with Historic District, NATIONAL HISTORIC LANDMARK (4/27/92) [1], DEMOLISHED (1996)

Pratt Historic District, Roughly bounded by Ferry Street, Kanawha River, Charles and

Pratt Avenues including cemetery (1/12/84) [73]

South Charleston

South Charleston Mound (Criel Mound), US 60 in city park (10/15/70) [1]

St. Albans

*Coal River Locks, Dams and Log Boom Archaeological District, Kanawha, Boone, and Lincoln Counties (11/24/97) [59]

Chilton House, Off US 60 (4/29/77) [1]

Bank of St Albans, (St. Albans City Building), 80 Old Main Plaza (2/1/88) [1]

"The Beeches", (Huntington-Skinner House/Woman's Club of St. Albans) 805 Kanawha Terrace (4/20/79) [1]

William E. Mohler House, 819 Pennsylvania Avenue (2/10/83) [1]

St. Albans C&O Railroad Depot, (7/9/97) [1]

St. Albans Post Office, 202 6th Street (11/4/94) [1]

St. Mark's Episcopal Church, 405-407 B Street (11/7/77) [1]

St. Paul Baptist Church, 821 B Street, (4/13/98) [1]

St. Albans Vicinity

St. Albans Site, Address Restricted (5/3/74) [1]

LINCOLN COUNTY

Coal River Locks, Dams and Log Boom Archaeological District, Kanawha*, Boone, and Lincoln Counties (11/24/97) [59]

Alum Creek Vicinity

Holley Hills Estate, CR 8, S of Alum Creek on Coal River Road (12/1/80) [7]

LOGAN COUNTY

Logan

Chafin House, 581 Main Street (3/28/94) [1]

Sarah Ann Vicinity

Hatfield Cemetery, S of Sarah Ann on US 119, Hatfield Cemeteries of Southwestern West Virginia TR (11/28/80) [2]

MARION COUNTY

Barrackville

Barrackville Covered Bridge, SR 21 over Buffalo Creek, West Virginia Covered Bridges TR (3/30/73) [1]

Fairmont

Fairmont Downtown Historic District, Along Adams, Washington, Quincy, Cleveland, and Fairmont Avenues (8/15/95) [94]

Fairmont Normal School Administration Building, (Fairmont State Admin Bldg)
Jct of Locust Avenue and Bryant Street (3/28/94) [1]
Thomas W. Fleming House, (Woman's Club of Fairmont) 300 1st Street (8/29/79)
[1]
"High Gate", (James E. Watson House), 801 Fairmont Avenue (4/15/82) [2]
High Level Bridge ("Million Dollar Bridge"), Jefferson Street, crossing the
Monongahela River (12/4/91) [1]
Jacobs-Hutchinson Block, (People's Bank) 201-209 Adams Street (7/21/95) [1]
Marion County Courthouse and Sheriff's Residence, Adams and Jefferson Streets
(5/29/79) [2]
Masonic Temple, 320 Jefferson Street (4/9/93) [1]
Shaw House, 425 Morgantown Avenue (9/14/88) [4]

Mannington

Mannington Historic District, Roughly bounded by High, Clarksburg and Howard
Streets and Buffalo Circle (11/22/95) [207]

Mannington Vicinity

Hamilton Round Barn, CR 11, Round and Polygonal Barns of West Virginia TR,
(7/9/85) [1]

Montana Vicinity

Jacob Prickett, Jr. Log House, S of Montana off CR 72, near Prickett's Fort State
Park (4/20/79) [1]
Prickett Bay Boat Launching (Prickett's Fort), 5 miles E of Fairmont on CR 72 off
SR 73, Prickett's Fort State Park (2/12/74) [1]

MASON COUNTY

Clifton

Powell-Redmond House, 23 Columbia Street (2/10/83) [1]

Leon Vicinity

Gen. John McCausland House, (Grape Hill), SR 35 (6/16/80) [1]

Mason

Gold Houses, 503, 505 N. Second Street (7/9/97) [4]
Virgil A. Lewis House (Shumaker-Lewis House), Brown Street (3/12/79) [1]

Pliny

Gen. John McCausland House, (Grape Hill), SR 35 (6/16/80) [1]
Gen. John McCausland House, Boundary Increase and Additional Information
(7/5/00) [28]

Point Pleasant

Lewis-Capehart-Roseberry House ("Roseberry"), 1 Roseberry Lane (8/29/79) [1]

Point Pleasant Battleground, SW corner of Main and 1st Streets (1/26/70) [1]
Point Pleasant Historic District, Main Street between 1st and 11th , and Viand
Street
between 8th and 10th (7/1/85) [94]

Point Pleasant Vicinity
Eastham House, US 35 (2/24/89) [2]

Southside
"Elm Grove" (Long Farm), US 35 (7/16/92) [8]

Southside Vicinity
Couch-Artrip House, US 35 (8/23/84) [3]

McDOWELL COUNTY

Coal Company Stores in McDowell County Multiple Property Submission
(4/17/92)
Algoma - Algoma Coal and Coke Company Store, CR 17
Caretta - Carter Coal Company Store, Jct of WV 16 and CR 12/8
Coalwood - Carter Coal Company Store, CR 2
Jenkinjones - Pocahontas Fuel Company Store and Office Buildings, CR 8
Kimball - Houston Coal Company Store, US 52
Landgraff - Empire Coal Company Store, US 52
Maybeury - Pocahontas Fuel Company Store, US 52
Pageton - Page Coal and Coke Company Store, SR 161
Ream - US Coal and Coke Company Store, CR 13/2
Switchback - Pocahontas Fuel Company Store, US 52
Vivian - Peerless Coal Company Store, S of US 52

Elkhorn
John J. Lincoln House, Off US 52 (7/16/92) [5]

Kimball
World War Memorial, US 52 (4/9/93) [1]

Switchback
James Ellwood Jones House, N of US 52, E of Turkey Gap Branch (4/2/92) [6]

Welch
McDowell County Courthouse, Wyoming Street (8/29/79) [1]
Welch Commercial Historic District, Roughly bounded by Wyoming Street,
Elkhorn
Circle and the Tug River (4/2/92) [57]

MERCER COUNTY

Athens Vicinity

Colonel William Henderson French House, S of Athens off SR 20 (3/12/76) [1]

Bluefield

Bluefield Downtown Commercial Historic District, Roughly bounded by Princeton

Avenue, Scott, High, and Russell Streets (3/18/87) [3]

Hancock House (Alpha House), 300 Sussex Street (1/17/90) [1]

Municipal Building of Bluefield, 514 Bland Street (5/29/79) [1]

South Bluefield Multiple Property Submission (7/29/92) [237 total]

Country Club Hill Historic District, Along Whitehorn, Lebanon and Liberty Streets [51]

Easley House, 1500 College Avenue [2]

Jefferson Street Historic District, Along Jefferson Street between Cumberland Road and College Avenue [63]

South Bluefield Historic District, Along Mountain View, Bland Road, Oakhurst and Parkway [84]

Upper Oakhurst Historic District, Along Oakhurst, Groveland, Edgewood and Mountain View [37]

Bramwell

Bramwell Historic District, Main Rose, Bloch, Duhring, Wyatt, Church, N and S River Streets (2/10/83) [69]

Bramwell Additions Historic District (Boundary Increase), Along Bluestone Avenue, SW of US 92 (8/3/95) [166]

Princeton

Dr. James W. Hale House (Temple Knob), 1034 Mercer Street (3/12/76) [1]

Mercer County Courthouse, Courthouse Square, Main Street (11/28/80) [1]

MINGO COUNTY

Matewan

Matewan Historic District, Roughly bounded by McCoy, Alley, Railroad Alley, Mate Street underpass, and Warm Hollow, NR (4/27/93) [43], National Historic Landmark (2/18/97) [18]

New Town Vicinity

Hatfield Cemetery, S of New Town on SR 6, Hatfield Cemeteries in Southwestern West Virginia TR (11/28/80) [2]

Alexander Wade House, 256 Prairie Street NR 10/15/66), National Historic Landmark (1966) [1]

Walters Residence, 221 Wiley Street (8/18/83) [1]

Waitman T. Willey House, 128 Wagner Road (4/15/82) [1]
Women's Christian Temperance Union Community Building, 160 Fayette Street
(10/30/85) [1]

West Virginia University Campus

Men's Hall (Boreman Hall South), Prospect and High Streets, WVU MPS
Elizabeth Moore Hall, University Avenue, WVU Neoclassical Revival Buildings
TR (12/19/85)[1]
Oglebay Hall, University Avenue, WVU Neoclassical Revival Buildings TR
(12/19/85) [1]
Purinton House, University Avenue, WVU Neoclassical Revival Buildings TR
(12/19/85)[1]
Stalnaker Hall (Woman's Hall), Maiden Lane, WVU Neoclassical Revival
Buildings TR (12/19/85)[1]
Stewart Hall, West Virginia University Campus, University
Avenue (12/4/74) [1]
Woodburn Circle, West Virginia University Campus, University Avenue
(12/4/74) [3]
Vance Farmhouse, 1535 Mileground, (Off Campus) (11/21/91) [1]

Morgantown Vicinity

Cooper's Rock State Forest Multiple Property Submission, (5/19/91)
Camp Rhododendran, off US 48, 8 miles E. of Morgantown [10]
Cooper's Rock State Forest Superintendent's House and Garage, off

US 48 [2]

Easton Roller Mill, E. of Morgantown on ST 119/17 (12/19/78) [1]
Hamilton Farm Petroglyphs , S. of Morgantown (Address restricted) (8/7/74)[1]

Pentress Vicinity

Mason Dison Survey Terminal Point, 2.25 miles NE of Pentress on SR 39
(6/25/73)[1]

Smithtown

Old Watson Homestead House, SR 73 (12/7/84) [2]

Westover

St. Mary's Orthodox Church, West Park and Holland Avenue (2/3/88) [1]

Williamson

Coal House, 2nd Avenue and Court Street (3/6/80) [1]
Mountaineer Hotel, 31 E. 2nd Street (3/21/97) [1]
R.T. Price House, 2405 West 3rd Street (1/10/91) [1]

PRESTON COUNTY

Albright Vicinity

Virginia Furnace, SR 26 along Muddy Creek (7/1/99)[4]

Arthurdale

Arthurdale Historic District, E & W of SR 92 (2/1/89) [150]

Aurora Vicinity

"Gaymont" (Brookside Inn), US 50 W of jct. SR 24 (4/14/92)[2]

Red Horse Tavern, 1 mile E of Aurora on US 50 (7/2/73)[1]; Boundary Increase (5/4/79)

Brandonville

Hagans Homestead, SR 26, 1 mile N of Jct with I-68 E (Exit 23) (7/14/93) [1]

Bretz

Elkins Coal and Coke Company Historic District, Off SR 7, NR (8/25/70) [145];
National Historic Landmark (7/1/83) [145]

Cranesville Vicinity

Reckart Mill, W of Cranestown at Jct of SR 28 and SR 47/2 (6/3/80) [1]

Kingwood

Kingwood Historic District, Roughly bounded by Tunnelton, Main, Sigler, High
and Price Sts, and Brown Avenue (7/15/94) [103]

James Clark McGrew House, 109 E. Main Street (7/9/93) [3]

Masontown Vicinity

Ralph Snyder Decagonal Barn, CR 52/2, Round and Polygonal Barns of West
Virginia TR (12/2/85) [1]

Redhouse Vicinity

Fairfax Stone Site, N of William at corner of Grant, Preston and Tucker*
Counties (1/26/70) [1]

Reedsville Vicinity

Colonel Thomas Brown House, CR 92, S of Reedsville (3/17/94) [1]

Terra Alta

James S. Lakin House, 102 Aurora Avenue (1/9/97) [1]

Terra Alta Bank, 109 E. Washington Street (7/9/97) [1]

Tunnelton

Tunnelton Railroad Depot, Boswell St N of jct of Boswell and South Sts (5/2/96)
[1]

PUTNAM COUNTY

Buffalo

Buffalo Town Square Historic District, US 35 (8/16/91) [3]

Buffalo Vicinity

Buffalo Indian Village Site, Address restricted (1/25/71) [1]

Hurricane

Asbury House, 2922 Putnam Avenue (3/21/97) [1]

Winfield

Putnam County Courthouse, 2289 Winfield Road (7/5/00) [1]

RALEIGH COUNTY

Beckley

Beckley Courthouse Square Historic District, Bounded by Prince, S.Kanawha,
Church,Lebanon, Howe and McCreery (8/31/94) [100]

Phillips-Sprague Mine, (Exhibition Mine), New River Park (3/25/88) [1]

"Wildwood" (General Alfred Beckley House), 117 Laurel Terrace (8/25/70) [1]

Crow Vicinity

Little Beaver Dam, Little Beaver State Park, CR 307 (4/1/98) [1]

Hinton Vicinity

Trump-Lily Farmstead, SR 26/3 2.5 miles from SR 26 (11/8/90) [7]

Sandstone Vicinity

St. Colman's Roman Catholic Church and Cemetery, SR 26 (8/23/84) [1]

ROANE COUNTY

Spencer

Robey Theatre, 318 Main Street (3/29/89) [1]

Spencer Vicinity

Albert S. Heck Mansion, Sr 14 (3/5/99) [1]

SUMMERS COUNTY

Hinton

Hinton Historic District, Roughly bounded by C&O Railroad, James Street, 5th Ave, and Roundhouse (2/17/84) [252]
Summers County Courthouse, Ballangee St and 1st Ave, (3/2/81) [1]

Lowell Vicinity

Col. James Graham House, SW of Lowell on SR 3 (3/16/76) [1]
Samuel Gwinn Plantation, CR 15 (3/8/89) [8]

Pence Springs

Pence Springs Hotel Historic District, Roughly bounded by SR 3, Buggy Branch Road, and Pence Springs Access Road (2/27/85) [8]

Pipestem Vicinity

Jordan's Chapel, NW of Pipestem on SR 18, (2/22/80) [1]

TAYLOR COUNTY

Grafton

Andrews Methodist Episcopal Church (International Mother's Day Shrine), E. Main St. between John and Luzader Sts NR(12/18/70) [1]; National Historic Landmark(10/5/92)
Grafton Downtown Commercial Historic District, Main and Latrobe Sts between Bridge and St. Mary's (4/9/84) [73]
Grafton National Cemetery, 431 Walnut Street (2/19/82) [1]

Grafton Vicinity

Clelland House, Off CR 250/4 (6/23/80) [1]
Tygart River Reservoir Dam, On the Tygart River S of Grafton (6/23/95) [6]

Webster

Anna Jarvis House, US 119 and 250 (5/29/79) [1]

WAYNE COUNTY

Ceredo

Z. D. Ramsdell House, 1008 B Street (8/18/83) [1]

Fort Gay Vicinity

Wildcat Branch Petroglyphs, Address restricted (7/22/79) [1]

Kenova

Joseph S. Miller House, 748 Beech Street (3/29/89) [1]

WYOMING COUNTY

Itmann

Itmann Company Store and Office, SR 10/16 (11/28/90) [1]

Mullens

Mullens Historic District, Roughly bounded by Lusk and Highland Avenues,
Norfolk and Southern RR tracks and Water Street (11/16/93) [96]

Pineville

Wyoming County Courthouse, Main Street (11/27/79) [1]

Appendix F

Agency Coordination



United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241



July 24, 2001

Mr. Eugene K. Gruber
Regional Environmental Officer
Federal Emergency Management Agency
Disaster Field Office
FEMA-1378-DR-WV
The Columbia Gas Building
1700 MacCorkle Avenue, S.E., 7th Floor
Charleston, West Virginia 25304

Dear Mr. Gruber:

The U.S. Fish and Wildlife Service (Service) has reviewed your Draft Programmatic Environmental Assessment (DPEA) dated July 20, 2001 regarding the potential impacts of your proposed action on wetlands and federally listed threatened and endangered species. The DPEA was prepared to assess the development of temporary and transient emergency housing for disaster victims in southern West Virginia in the aftermath of recent flash flooding. These comments are submitted pursuant to the Endangered Species Act (87 Stat. 884, as amended, 16 U.S.C. 1531 et seq.) (ESA) and the National Environmental Policy Act (NEPA).

The Service has consulted directly with Mr. Alan Hermely of your staff regarding federally listed species by providing comments and recommended changes to Appendix C, List of Threatened and Endangered Species, of the DPEA.

The Federal Emergency Management Agency (FEMA) proposes to construct temporary and transient emergency disaster housing on sites throughout the flood damaged areas. The DPEA provides a mechanism to ensure compliance with NEPA and the ESA. The Service believes that implementation of the proposed mitigation measures outlined in the DPEA will preclude adverse impacts to wetlands and is not likely to adversely affect federally listed threatened and endangered species. Therefore, no further Section 7 consultation pursuant to the ESA is required with the Service. Should project plans change, or if additional information on listed and proposed species becomes available, this determination may be reconsidered.

If you have any questions regarding these comments, please have your staff contact our Endangered Species Specialist, Mr. William A. Tolin, or contact me directly, at (304)-636-6586 or at the letterhead address.

Sincerely,

William A. Towner
for Jeffrey K. Towner
Field Supervisor

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Boone	Bald Eagle (T) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Cabell	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Pink mucket pearly mussel (E) (<i>Lampsilis abrupta</i>)	No Further Coordination is Required
Calhoun	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Clay	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Clubshell (E) (<i>Pleurobema clavaI</i>)	No Further Coordination is Required

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Doddridge	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Clubshell (E) (<i>Pleurobema claval</i>)	No Further Coordination is Required
Fayette	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Running Buffalo Clover (E) (<i>Trifolium stoloniferum</i>)	No Further Coordination is Required. This species can be found along the New River and Cotton Hill.
	Fanshell (E) (<i>Cyprogenia stegaria</i>)	No Further Coordination is Required
	Pink mucket pearly mussel (E) (<i>Lampsilis abrupta</i>)	No Further Coordination is Required
	Tuberculed-blossom pearly mussel (E) (<i>Epioblasma torulosa torulosa</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required. This species can be found near Gavely and Meadow Rivers.

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Kanawha	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Pink mucket pearly mussel (E) (<i>Lampsilis abrupta</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Fanshell (E) (<i>Cyprogenia stegaria</i>)	No Further Coordination is Required
	Clubshell (E) (<i>Pleurobema claval</i>)	No Further Coordination is Required
	Tuberculed-blossom pearly mussel (E) (<i>Epioblasma torulosa torulosa</i>)	No Further Coordination is Required. This species can be found near Gavely and Meadow Rivers.
	Northern Riffleshell (E) (<i>Epioblasma torulosa rangiana</i>)	No Further Coordination is Required
Lincoln	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Logan	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Marion	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Mason	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
McDowell	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Mercer	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required
Mingo	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Preston	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Flat-Spired Three-Toothed Land Snail (T) (<i>Triodopsis platysayoides</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required
Putnam	Bald Eagle (T) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
Raleigh	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required
Roane	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required

Endangered and Threaten Species Consultation

FEMA-1378-DR-WV

E – Endangered

T – Threatened

COUNTY	SPECIES	COMMENTS
Summers	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required
Taylor	Bald Eagle (E) (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (E) (<i>Puma concolor cougar</i>)	No Further Coordination is Required
	Virginia Spirea (T) (<i>Spiraea virginiana</i>)	No Further Coordination is Required
Wayne	Bald Eagle (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (<i>Puma concolor cougar</i>)	
Wyoming	Bald Eagle (<i>Haliaeetus leucocephalus</i>)	No further coordination is required. This species is also classified as Occasional Transient (OT).
	Indiana Bat (E) (<i>Myotis sodalis</i>)	No Further Coordination is Required
	Eastern Puma (<i>Puma concolor cougar</i>)	No Further Coordination is Required